



**Hate crimes perpetrated against lesbian women  
and their personal experiences of violence in  
family and community settings.**

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**Submitted in fulfilment of the requirements for the degree of  
Master of Arts in International Relations in the School of Social  
Science, College of Humanities, University of KwaZulu-Natal, in  
January 2019.**

# DECLARATION

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**Date**

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**Noleen Loubser**

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**Date**

## ACKNOWLEDGEMENTS

To my late grandmother Tina Son this is for you, for your love, all your sacrifices and for teaching me to be happy with the person I am. To my beautiful mother Maggie, and to my whole family, my aunts, Maria, Dudu, Mbali and Mabatho, my uncles Victor and Thobani, my Siblings, Khethelo and Nkululeko, and to all my cousins thank you for all your prayers, for all your sacrifices, your love and support. I am deeply grateful for everything you have done to make this journey a success. Thank you for accepting me for who I am and for supporting my dreams. Thank you for always teaching me to love and seek happiness. To my Godmother, Nitha thank you for your support and for loving me unconditionally. I am deeply grateful to all my friends, Thandeka ‘maMchunu’, Sne and Luke, for all your love and support throughout this whole process. Without your support I wouldn’t have survived this journey. To my housemates, I am grateful to have met all of you, we have come a long way and your support and encouragement are highly appreciated.

To my supervisor Dr Noleen Loubser thank you for your supervision, encouragement, support and for believing in me and this study. This would have not been possible without your guidance and supervision. Thank you for nurturing me academically and for being my source of inspiration.

My sincere gratitude goes to the CHASU LGBTI Forum at UKZN Pietermaritzburg Campus, Ubumbano LGBTI and the Gay and Lesbian Network. I have no words to express how grateful I am to be able to work with you all. This would have not been possible without you. Thank you for trusting me with your experiences and for sharing them with me. To the Gay and Lesbian Network team, Anthony, Tracey and Londeka, thank you all for your support and for everything you did for me. To everyone who took part in this study, thank you, may God bless each and every one of you.

Last but not least to God, I know you had a plan and I give thanks to you Almighty Lord.

## **DEDICATION**

To everyone who has ever felt like they don't belong, or they are invisible, this is for you. To everyone who has been rejected by friends, families and communities, never stop fighting and never stop believing, be proud of who you are.

## ACRONYMS AND ABBREVIATIONS

AC	African Charter
AU	African Union
AIDS	Acquired Immune Deficiency Syndrome
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CJS	Criminal Justice System
DM	Declaration of Montreal
EU	European Union
GLN	Gays and Lesbian Network
HIV	Human Immunodeficiency Virus
IACHR	Inter-American Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICISS	International Commissions Intervention State Sovereignty
IGLHRC	International Gay and Lesbian Human Rights Commission
IHRL	International Human Rights Law
ILGA	International Lesbian Gay Association
LGBT	Lesbian Gay Bisexual Transgender
OUA	Organization African Unity
OHCHR	Office of the High Commissioner for Human Rights
OHCR	Office of the High Commissioner for Human Rights
R2P	Responsibility to protect
SA	South Africa
SAHRC	South African Human Rights Commission
SOGI	Sexual Orientation and Gender Identity
UDHR	Universal Declaration Human Rights
UN	United Nations
UNAIDS	United Nations Program on HIV/AIDS
UNDP	United Nations Development Programme
UNDR	United Nations Development Report
UNGA	United Nations General Assembly
UNHCHR	United Nations High Commissioner Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNHRC	United Nations Human Rights Committee
WHO	World Health Organization

## **ABSTRACT**

The South African Constitution, which has been praised globally for being the most progressive, promised equal rights and protection to every citizen regardless of their sexual orientation. However, it seems the Constitution has failed to fulfil its promise to protect and defend lesbian persons against violence. The current debates about hate crimes against lesbians as part of the widespread of abuse against women in South Africa demonstrate a perfect example of how the South African government has failed to protect lesbian persons. Hate crimes against anyone including lesbian persons are a form of human rights violations. These violations are highlighted together other difficulties that lesbians face. This research argues that South Africa together with other African States has failed to protect lesbian persons from hate crimes. This was demonstrated by engaging the Responsibility to Protect Theory, the Duty of the State to Protect, and the meaning of the South African Constitution. This study also discusses how the structure of the African societies is guided by the concepts of Christianity and religion which perpetuate violence against lesbians, where homosexuality is perceived as “immoral” and “Un-African”.

This research details and contextualizes violence and types of hate crimes against lesbians and documents types of hate crimes, including degrading treatment and punishment by the State as well as discrimination, harassment and violence at the hands of families, churches, strangers, co-workers, community members, and so on. The study had two focus areas. The first area gathered statistics from the UKZN Pietermaritzburg LGBTI Forum, the Pietermaritzburg Gay and Lesbian Network, and the Ubumbano LGBTI group. It focused on experiences of violence. 69 lesbians participated, and 96% had experienced violence. In addition, other statistical data and facts of hate crimes against lesbian persons in other countries have been taken from different sources, including books and online journals. The second focus area was conducted at UKZN using a convenience sample which focused on attitudes towards lesbian persons. The results indicated that 80% of heterosexual students who were interviewed had positive attitudes towards lesbian persons. The study also looked at the State’s legal obligation to protect lesbian persons and prevent violence of any kind against sexual minorities using the Social Identity Theory and Responsibility to Protect Theory as theoretical and conceptual frameworks. Lastly, the study provides recommendations for implementing this.

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# **CHAPTER ONE: INTRODUCTION AND BACKGROUND OF THE STUDY**

## **1.1. Introduction**

International human rights agencies and policy makers have raised great concern about the increasing number of reported hate crimes based on an individual's actual or perceived sexual orientation or gender identity, commonly known as anti-gay hate crimes. Lesbian persons are among the sexual minority population that is victimized and marginalized because of the individual's actual or perceived sexual orientation. Different studies and reports indicate that lesbian persons are victims of verbal assaults, physical attacks, marginalization and many other forms of the crimes all over the world, by individuals and by the State, because of their sexual orientation or gender identity. These acts of victimization have been documented in different settings such as schools, higher learning institutions, churches, health facilities, homes and within communities. Some of these acts of violence are aimed at 'correcting' the victim's sexual orientation or gender identity (Reddy, 2005). Hate crimes do not only violate lesbian persons' human rights but also challenge victims' beliefs about their self-worth, self-identity, personal safety and freedom (Herek, Cogan & Gillis, 2002). While the general public in the South Africa has become more tolerant and accepting of Lesbian Gays Bisexual Transgender (LGBT) persons, discrimination, prejudice and violence are part of the hate crimes that continues to affect lesbian persons within their families, communities and interpersonal relationships. The available data show that hate crimes are not reported and remain largely undocumented, as a result the perpetrators of such violence go unpunished.

In that order, according to the Inter-American Commission on Human Rights (IACHR) report, there have been several complaints against law enforcement authorities for victimizing lesbian persons physically, verbally, and subjecting lesbian persons to cruel and inhuman treatment (Meyer, 2003). Ibrahim (2015) stated high levels of exemption regarding lesbian victimization by the police and law enforcers are reported daily, and these acts of abuse and victimization committed by the police authorities and law enforcement are rarely exposed or condemned. In 2011 the IACHR appealed for the security of arrested or imprisoned Lesbian persons and other vulnerable minority groups, because they are believed to be at greater risk of experiencing human rights violations while they were in custody (Rudman, 2015). The board noted the alarming increasing vulnerability of lesbian persons exposed to sexual violence by other inmates or by custodian staff while in detention, also noting that such discrimination and

victimization deprive lesbian persons of their freedom because of their sexual orientation or gender identity, and they are not justified under any circumstances.

In addition, violation of lesbians' human rights by many States has also raised universal attention. Many western States have been praised for legalizing and accommodating lesbian people and other sexual orientations or gender identities in their culture and religion. Netherlands became the very first country in the world to permit marital relationships of lesbian and gay persons in April 2001. Many other countries followed, including South Africa where same-sex marriage became legal when the Civil Union Act was amended on November 30<sup>th</sup>, 2006 (Kollman, 2015). Currently, 15 Western European States including Belgium, France and Spain permit couples who are in same-sex relationships to marry in a public ceremony, and to adopt children. In Brazil, Argentina and Colombia adoptions and same-sex marriages are also legal (Friedman, 2012). In North America Canada led the way in June 2005 by authorizing same-sex marriage and adoptions (Kollman, 2015). Gay and lesbian rights such as adoption rights and rights of attorney are usually associated with civil rights in most western countries (Donnelly & Whelan, 2017). In addition, Bosswell (2015) pointed out that homosexuality is no longer about a question of status legality or sexual orientation, which means it is rare to find countries where homosexuality is illegal in most western states (Bosswell, 2015).

Furthermore, because of the western influence in fighting for decriminalization of homosexuality, lesbian persons are now 'coming out' about their sexual orientation and living their lives in public as lesbians. Lesbian persons from other different parts of the world are fighting for their rights and for decriminalization of homosexuality. In response to their increasing visibility, lesbian persons continue to face severe victimization and abuse by the state. "In many African countries disclosure might put one in serious danger with the looming possibility of severe penalties such as imprisonment and sometimes death" (Sandfort, Simenel, Mwachiro and Reddy, 2015: 5). African State leaders have voiced opposing statements on the recognition and protection of lesbian persons. Most state leaders, government officials and individuals have rejected homosexuality and labelled both same-sex sexual acts and same-sex marriages as "immoral and unethical" (Warner, 2000: 4).

Every human being regardless of their sexual orientation has a right to live freely without fear of being discriminated or violated by anyone. Hate crimes against individuals on account of their sexual orientation form as a serious abuse of the right to life, liberty and security of the person, threatening their equal enjoyment of fundamental rights and freedoms (O'Flaherty &

Fisher, 2008). Hate crimes against persons self-identifying as lesbians have become a strongly challenged, contested and justified issue in most African countries including South Africa. Lasenza (1997) supported this statement by stating that hate crimes against lesbian persons are common and the perpetrators are known in their communities. However, these issues are just not recognized as an important and serious matter. However, within the international community, hate crimes toward lesbian persons have been viewed as a serious concern and one that is clearly against humanity and forming one of the most universal human rights violations. Various studies have been conducted and published globally demonstrating the nature of hate crimes that have been perpetrated towards lesbian persons and the extent to which they are discriminated against and violated in their communities due to their sexual orientation. It has been noted that the concept of 'sexual orientation' suggests adverse boundaries upon forms of sexual subjectivity, 'ways of being' and identity (Bench, 1997). According to Lipkin (2004), in most African countries including those that have decriminalized same-sex relationships, literature has shown that anti-gay hate crimes constitute a serious security problem, hence violating lesbians' rights. In addition, Dunton & Palmberg (1996) argued that discrimination and abuse are unacceptable whether directed towards a person because of their sexuality, or because they belong to any minority group.

Hence, this research focused mainly on hate crimes perpetrated towards lesbian identifying persons because of their sexual status by individuals and the State. Ellis (2009:723) noted that most... "...western countries have made consideration moves to afford legal rights on a basis of sexual orientation and/or gender identity" Research by Ellis (2009) and Hegarty (2004) suggested that in most western countries equal rights for lesbian, gay, bisexual, and transgendered persons as part of sexual minority population are well supported in principle; similarly, under the South African Constitution sexual minority rights are provided. However, equal protection, implementation and enforcement of these rights in South Africa is much more opaque (Ellis, 2009:725). This research sought to investigate hate crimes against lesbian persons from the international, national and regional context. Previous literature and various elements and case studies which may assist to explain the extent to which Lesbian persons experience abuse and hate crimes are discussed. The researcher used quantitative and qualitative research methods to gather information regarding the level of treatment and punishment indorsed by individuals and the State towards Lesbian persons, Human Rights violation and criminalizing laws against Lesbian Persons.

## **1.2. Scope of the problem**

Much research has been done on the experiences of hate crimes toward lesbian persons, however most studies have been conducted in a western context. As such, there have been few studies conducted in a non-western context. The main aim of this study was to focus on experiences of hate crimes towards lesbian individuals in a variety of settings, and attitudes towards lesbian persons. As little research has studied hate crimes and attitudes toward lesbian individuals in an African context, one key contribution to the research would be to investigate this phenomenon from an African perspective. This was done using the social identity theory and “un-African” concept to guide the exploration of lesbian identity and what it means to be lesbian in South Africa. The study included an exploration of heterosexual persons’ attitudes toward lesbian individuals.

## **1.3. Sexual orientation and Homosexuality.**

Sexuality, Sexual orientation and homosexuality are part of lesbian identity, as per the World Health Organization (WHO): “Sexuality is a central aspect of being human, throughout life; it encompasses sex, gender identities and roles, sexual orientation, eroticism, pleasure, intimacy, and reproduction.” (World Health Organization, 2015:5).

For the purposes of this chapter it is of great importance to provide a brief literature that outlines homosexuality and sexual orientation concept.

### **1.3.1. Sexual orientation**

According to the World Health Organization (2015:5), “sexuality is experienced and expressed in thoughts, fantasies, desires, beliefs, attitudes, values, behaviours, practices, roles and relationships. It is influenced by the interaction of biological, psychological, social, economical, political, cultural, historical, religious and spiritual factors”. Similarly, Kauth & Kalichman (1995) defined sexual orientation as a collective experience and interaction of stimulating fantasy, romantic attraction, and sexual behaviour engaged toward one gender or both genders. In this context, a female who is emotionally or sexually attracted to other females is referred to as “lesbian”. Most genetic reproductions of sexual orientation originated from dichotomous categories; active-passive, normal-abnormal, masculine-feminine, and heterosexual-homosexual (Ross, 1987). Sexual orientation may change from time to time and it may not always reflect sexual behaviours (Kauth & Kalichman, 1995). One female can be attracted to another female and be in a sexual relationship with that female but not identify as lesbian. “Traditional theories of sexual orientation have often assumed default development of



heterosexuality and presented a “sickness model” of homosexuality” (Kauth & Kalichman, 1995:82). Therefore, sexual orientation has ranked constantly as the third-highest influence for hate crime instances (Marzullo, Libman, Crimes & Ruddell-Tabisola, 2009).

In general, sexual orientation has been defined as heterosexual, bisexual, or homosexual (lesbian or gay). It is based on the gender of the persons to whom someone is emotionally, physically, sexually, or romantically attracted. It is understood to refer to a person’s aptitude for deep emotional, sexual, and affectional attraction to and intimate and sexual relations with individuals of a different gender or the same gender or more than one gender (Giddens, 2013). According to Coleman (1982:35), “everyone has a sexual orientation which is integral to a person’s identity”. Nevertheless, sexual orientation involves attraction, behaviour and identity and it is expressed in relationship to others who fill a need for love, attachment, and intimacy towards same-sex persons (Giddens, 2013). The term ‘identity’ is used in this study to refer to how individuals perceive or identify themselves.

### **1.3.2. Homosexuality**

The term “homosexuality” is generally understood as the opposite to “heterosexuality” and it was coined by Hungarian physician Karoly Maria Benkert in 1886. Price (1982) defined homosexuality as “the state of having a homosexual identity: one who identifies him/herself as preferring a member of the same-sex for emotional and sexual interaction” (1982:469). Homosexuality refers to patterns of same-sex sexual activities such as romantic and emotional affection, identities, and communities centred on same-sex sexual desires and relationships, and the communal culture formed by those communities among themselves (Herek et al, 2002). Female homosexuality is usually indicated to as “lesbianism”. According to Tripp (1975), homosexuality and heterosexuality commonly develop in similar ways, but homosexuality is not allowed to be publicly practiced and it is not encouraged by societies, unlike heterosexuality. Homosexuality is “stigmatized as inherently sick or dangerous and worthy of punishment through legal (the criminal justice system) or extra-legal (in the form of anti-gay hate crimes) means” (Herek et al, 2002:96).

According to Jagose (1996), the term ‘homosexuality’ is generally employed to define individuals who are attracted to persons of the same gender as them. In many societies, homosexuality is condemned and stigmatized when publicly recognized, therefore should not be displayed or practiced publicly (Herek, 1990:317). Meyer, 2003 stated that identifying homosexuality as a behaviour from ‘homosexual’ can be a complex subject of identity,

therefore, describing who is a homosexual can be a bit challenging and it is not always clear. This simply means that there are persons who are non-gender conforming and who practice same-sex acts but do not identify themselves as homosexuals.

Homosexuality is often described as abnormal and a violation to norms of gender. It is also associated with deviation from something as 'natural' as masculinity and femininity (Herek, 1990). In addition, Homosexuality is also associated with persons who do not conform to gender roles, irrespective of how they identify their sexual orientation. These individuals they usually face stigmatization and isolation, and may be attacked by their friends, families and communities. The following part of this chapter discusses the term 'hate crime' in relation to these two concepts.

#### **1.4. Recognizing the context**

The term 'hate crime' was coined by John Conyers, Barbara Kennelly and Maria Biaggi in 1985. Conyers, Kenelly and Biaggi (1985) cosponsored a Bill in the House of Representatives entitled 'Hate Crimes Statistics Act'. The Bill required the Department of Justice to collect and publish statistics on the nature of crimes motivated by racial, religious and ethnic prejudice from 1985 (Jacobs and Potter, 1998). Stories about hate crimes made headlines and the use of this term increased by appearing in newspapers nationwide. According to Jacobs and Potter (1997:4), the term 'hate crime' first appeared in a popular magazine on the 9<sup>th</sup> of October 1989 issue of the United States news and world report by John Leo titled 'The politics of hate'

According to Jacobs and Potter (1998), 'hate crime' refers to criminal conduct motivated by prejudice or bias. A hate crime is an act of violence that is motivated by hate or bigotry. Hate crimes, also known as bias crimes, are commonly referred to as crimes that mostly target individuals because of their perceived or actual membership in a certain social group, and these types of crimes are recognized as a serious social problem (Jennes & Broad, 1997). These type of crimes "are often directed against members of a particular group simply because of their membership in that group; the basis for an attack may be a victim's race, ethnicity, religion, sexual orientation, or gender – indeed, any physical or cultural characteristics which, in the mind of offenders, separates the victim from themselves" (Levin & Macdevitt, 2013:4). Offenders target or choose their victims because of a certain feature that they either do not like or do not approve of. However, most hate crimes do not involve planned hate groups whose members are committed to accomplishing a certain goal, but they are more often committed

under normal circumstances by disagreeable neighbours, co-workers, or a group of individuals looking for “pleasure” (Levin & Macdevitt, 2013).

Pendo (1994:159) defined hate crime as “any act of intimidation, harassment, physical force, or threat of physical force directed against any person, or family, or their property or advocate, motivated either in whole or in part by hostility to their real or perceived race, ethnic background, national origin, religious belief, sex, age, disability, or sexual orientation, with the intention of causing fear or intimidation, or to deter the free exercise or enjoyment of any rights or privileges secured by the Constitution” It is an “assault against all members of stigmatized and marginalized communities, and it does not occur in a social or cultural vacuum; rather, it is a socially situated, dynamic process, involving context and actors, structure, and agency” (Perry, 2002:1). The primary aim of the perpetrators in committing the act of hate is to send a clear message to the victim and the community to which they belong or with whom they identify. In line with this argument, Franklin (2000:340) stated that “hate crime statutes presume that perpetrators are motivated by hatred or animosity toward specified minority groups”. While any form of violence against any human being is wrong, vicious crimes based on prejudice aim to terrorize a particular community or group possess much stronger impact because of the motive (Welch, 2006). Hate crime comes in variety of forms and it has also “implicated and continues to implicate a range or perpetrators, from intimates to strangers to institutions such as the State, religion, and medicine” (Jenness & Broad, 1997:26). It is also rooted in the structural and cultural setting within which groups interact (Young 1990; Bowling, 1993).

Hall (2005) examined this phenomenon through sequence of questions such as ‘who is affected and who is the perpetrator, and why is it occurring’ and ‘where does it occur’, what can be done to make the situation better; he believed that “hate is a complex socio-cultural and psychological process that can be actualized in physical or verbal action and that human historiography would reveal hate at its advert” (Hall, 2005:235). He advised that asking these questions was crucial when one is addressing hate crime cases and it is of importance to deal with the origin of the problem since hate crimes are socially multifaceted. Hall claimed that “for all our zeal to attack hate we still have a remarkably vague idea of what hate actually is....it is still far less nuanced an idea than prejudice, bias, bigotry, hostility, anger, or just a mere aversion to others” (2005:9).

In most parts of the world the law differs on crimes that are associated with hate. This might be because of deep diverse cultures ideologies within societies. These cultures and other associated aspects play an important role in defining how hate crimes are conceptualized and criminalized (Hall, 2005). Hall believed that educating students and their communities to appreciate and understand the complex diversity that makes one human would result in less hate (2005:220). Turpin-Petrosino (2015) argued that cultural differences, social norms, and political interests play a large role in defining crime in general and hate crime in particular. Criminal activities that are associated with hate become outlawed and the public interest makes it easier for the crime to be prosecuted. Nonetheless, such laws become questionable if a hate crime is not validated and credible (Hall, 2005).

Boeckmann & Turpin-Petrosino (2002:223) defined hate crime as an unfortunate expression of negative stereotypes, prejudice, discrimination and intergroup tensions. The two authors stated further that politics values and related dynamics of public opinion play a crucial role in responses to such acts of aggression and it is always clear that the victims of hate crimes are chosen by virtue of their group identity, whether the acts of hate are seen as a crime or act of war. Ray & Smith (2001:204) defined hate crime as part of the complex legal and cultural practices of the regulation of violence. Perry (2002) argued that hate crimes are about power and declaring one's own identity over the identity of the other and not about emotive responses; furthermore, they are often committed in regular settings, maybe by an acquaintance, a neighbour, a co-worker or a group of people.

### **1.5. Conceptualizing the context**

The concept of a hate crime covers a lot of areas and there are different features and variations concerning the construction of the term. According to Sullaway (2004), the term 'hate crime' has been considered mostly as a contradiction and an unfortunate source of confusion. The nature of the occurrence is used to differentiate or distinguish forms of hate crimes, and the nature of the concept itself (Perry, 2002). The first point is that "hate crime is always and necessarily a crime" (Brudholm, 2015: 97). However, not all crimes can be recognized legally as hate-motivated crimes. Each state has its own procedure of categorizing and examining hate crimes from other crimes. Brudholm argued that legal responses to the examination of hate crimes often tend to focus on what differentiates hate crimes in general, also encompassing construction of specific fundamental violations or a particular retribution enhancement clause (2015). Nevertheless, public anti-hate movements and documentation endeavours have often

considered not only hate crimes from such a perspective, but also included any conduct including non-criminal practices of abuse or victimization that are perceived to be motivated by hate or prejudice and directed towards any human being (Perry, 2002). Furthermore, according to Herek et al (1989), hate crimes must be determined by the manifestation of hate.

Furthermore, within the human rights violation approach, hate crimes have often been viewed as a practice of abuse and discrimination, “Discrimination can take the form of violence generated by prejudice and hatred” (Judge & Nel, 2008:89). The perpetrators often select their target because of a legally protected characteristic such as race or sexual orientation, they target a particular place because it belongs to a certain person whom they do not like, or murder persons because of their ethnic background (Sue, 2010). Similarly, Berard (2010) stated that there are different notions that apply to the responsive attitude of the offender, be it opposition, hate or prejudice, and there are conceptions that are based on discriminatory selection, and in this manner the intention of selecting the target is due to their protected characteristic. In this context, perpetrators of hate crimes target lesbian persons based on their perceived or actual sexual orientation. West & Zimmerman (1987) noted that hate crimes can sometimes be explained not only by sexuality but by gender as well. Many forms of hate crimes occur when lesbian persons are perceived to “go against gender norms”. Likewise, according to the Office of Democratic Institutions and Human Rights “Hate crimes constitute a serious breach of Human Rights, they are destructive to both individuals’ freedoms and community safety. Where they go unpunished, hate crimes challenge the rule of law” (Kennedy, 2012:11). As per the Human Rights Watch views (1999), “Hate crimes are serious Human Rights violations” (Budholm, 2015). Indeed, literature suggests that hate crimes can be viewed and considered as the most inhuman type of discrimination.

Over the last years, hate crimes against lesbian persons in most parts of the world have become a prominent issue and a hotly debated subject in different fields in the international community. According to Herek, Cogan & Gillis (2002), the variety of hate crimes perpetrated toward lesbian persons all over the world has nowhere been understood, effectively prevented, or responded to. Growing numbers of reports and surveys have indicated that hate crimes against this community are a substantial matter, increasing and constituting a serious human rights violation and a serious public concern (McDevitt, Balboni, Bennett, Weiss, Orchowsky & Walbolt, 2003). Various media and scholarly reports have demonstrated different forms of hate crimes directed to lesbian persons. Meyer (2003) noted that many lesbian persons have suffered discrimination, harassment and physical violence because of their sexual orientation.

Dworkin and Yi (2003:270) noted that lesbian-identifying persons and those who are perceived to be lesbian face different forms of hate crimes such as being excluded from their communities, facing shame, discrimination, marginalization, violence and even death, and in most countries, they can possibly face criminal charges. Ellis (2009:724) argued that the term hate crime “does not encompass all forms of victimization that LGBT people (and indeed those assumed to be LGBT) might encounter”, for example, it does not include instances of ordinary occurrences such as name calling, discriminatory practices and other forms of discrimination which may not be legally considered hate crimes. Similarly, Perry (2002:125) argued that hate crimes are not only about controversial violence, but also about asserting one’s own identity over the identity of another, as well as about power.

### **1.6. International violence against lesbian persons.**

Homosexuality is illegal in 72 countries, in 45 countries sexual relationships between females is illegal, and in 8 of these countries homosexual acts or same-sex sexual relations is punishable with the death penalty. These countries have imposed discriminatory laws to oppress and deny lesbian persons their human rights. As a result, lesbian persons are targeted, abused, discriminated and marginalized because of their sexual orientation or gender identity. Increasing surveys suggest that hate crimes against lesbian persons have become more than just stigmatization, lesbian individuals have become target of different forms of abuse by the state and individuals, including being discriminated against in account of who they are (Herek, 2008). In addition, human rights activists also face violence and even prosecution for promoting and advocating for lesbians’ rights, often charged with cases of supporting ‘actions against nature’. Human rights activists seek to promote and protect basic human rights, including civil, political, social, and cultural rights (Mertus & Bourantonis, 2010). Amnesty International has reported cases of human rights violations based on sexual orientation ranging from sexual assaults, beatings, forced medical therapy and life imprisonment in countries such as Uganda, South Africa and Zimbabwe. Rejection by families, exclusion from social settings and imprisonment are among forms of discrimination faced by LGBT persons in their daily lives. Lesbians face pressure from their families through cultural and religious norms to be in a relationship with or to marry the opposite sex.

Lesbian individuals experience different forms of violence from family members after ‘coming out’ about their sexual orientation. Coming out as lesbian may be viewed as a rejection of their ‘real’ sexual orientation and failing to conform to gender roles. Studies have shown that lesbian

individuals are at high risk of experiencing rejection and hate crimes based on their sexual orientation with their families after ‘coming out’ to family members. In schools and universities, lesbian individuals face victimization and bullying from their classmates and even from the lectures and teachers. Verbal insults of homophobic remarks and physical assaults from other learners or students, administrators, lecturers and teachers based on sexual orientation or gender identity have been reported. Lesbian students are also more likely to face strict disciplinary actions including being expelled from schools. As a result, higher rates of victimization within schools and higher learning institutions may cause students who self-identify as lesbians to drop out from schools. Victimization of lesbian persons or any other human beings can lead to mental health related disorders such as depression and anxiety disorders and can even lead to suicidal thoughts.

In addition, rejection by friends, families and communities because of sexual orientation can cause lesbian individuals to start misusing substances such as alcohol and drugs. Previous studies have shown that victimization and rejection by families can cause lesbian persons to leave their homes as such lesbian persons tend to engage in high risk sexual behaviours such as selling sex for survival. They are also at high risk of experiencing interpersonal violence because, when they are kicked out or forced to leave their homes by their families, some move in with their partners, and if their partners are abusive, they will have nowhere to go but to stay in that abusive relationship. As a result, family rejection has been proven to be the main cause of health challenges for lesbian individuals. Furthermore, studies of hate crimes on the basis of sexual orientation or gender identity have revealed that “hate crime hurts more” than any other types of violence, and the increasing effect of this form of violence has been traumatic experiences from hate-motivated violence aimed at lesbian persons (Meyer, 2003).

Various research has shown that most lesbian persons fear being “outed” to their families and communities, being punished by the law, and also secondary victimization prevents lesbian persons from reporting abuse cases to the authorities. Sometimes they fear reporting the perpetrators because they live closer to them and they become threatened by the fact that they will be watching them. They also fear to seek help from the community members and even from the clinics because of the stigma that is attached to homosexuality. In countries such as Kenya and Zimbabwe, lesbian persons engage in sexual acts with men and some even marry men in order to hide their sexuality from people because of fear of abuse and being discriminated against, and also for protection.

Lesbian persons face various obstacles in accessing the important government organizations and services. They might not be able to exercise their human rights and report hate crimes, and they might be exposed to secondary victimization by the police. Additionally, harassment based on sexual orientation or gender identity causes barriers in gaining access to the justice system, access to the appropriate health care, and barriers to participating in public social programmes. Lesbian persons may be disowned by their families and this could increase the risk of poverty among this population and generate other economic and social hindrances. They might have difficulty in enjoying social government benefits such as housing and job opportunities. Social exclusion can extend to lesbian families, particularly their children, who might also experience exclusion by association. Unequal treatment in economic and legal government institutions can affect the wellbeing of lesbian persons.

Growing public concern over hate crimes directed at lesbian persons has also led to huge debates globally questioning the duty of the state to protect lesbian persons (Levin & Macdevitt, 2013) as well as the protection of lesbian Rights (McFarland & Depuis, 2001). Behind this there has been widespread movement activity and the establishment of Non-Governmental Organizations (NGO) and Activist organizations which seek to fight for and protect lesbian persons from any type of violence directed towards them including hate crimes (Stychin, 2003). States are also required to intervene and to come up with new reformed legislation to address and prevent hate crimes towards lesbian persons, and also to organize ways in which the justice system addresses certain types of hate crimes (Ray & Smith, 2001).

The notion of LGBT Human Rights as a universal matter was identified around the 1990s (Kollman & Waites, 2009). While the promotion of human rights including sexual rights is supported by the international community at large, lesbian human rights and sexual rights are still a part of regular debate in the international arena, opposed by discriminating laws against homosexuality. Among these debates it has been argued whether or not lesbian persons deserve to be granted human rights, and many states have come to the fore in opposing the idea that lesbians should be granted rights and that they should be protected legally (Ibrahim, 2015). However, some universal and regional human rights principles have been established by the international community to protect LGBT persons, and states have the obligation to uphold them. One of these is principles is the Yogyakarta Principle which "...presents a statement of global human rights related to sexual orientation and gender identity which are asserted as already existing international human rights law" (Kollman & Waites, 2009:5). The principle declares states to protect and respect human rights of LGBT persons, stressing that it is the duty

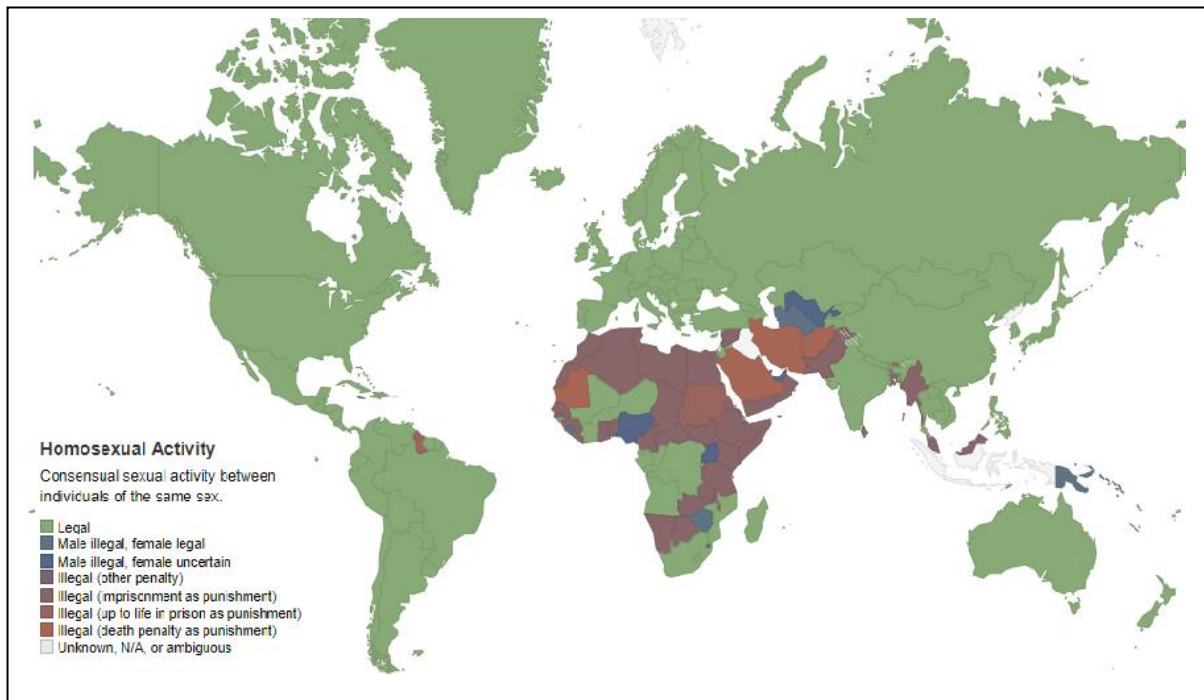


of the state to achieve universal human rights principles and protect LGBT persons. The claim of International Human Rights Law is also channelled by non-discrimination universal principles protected by the Universal Declaration of Human Rights of 1948 which clearly stated that “all human beings are born free and equal in dignity and rights” and “no one should suffer discrimination on the basis of race, colour, ethnicity, gender, sexual orientation. Birth or other status as established by human rights standards” (Gartner, 2005:61). Therefore, all persons, including homosexual persons, “are entitled to enjoy the protections provided for by the international human rights law, including respects of rights to life, security of person and privacy, liberty, the rights to be free from torture, arbitrary arrest and detention, the right to be free from discrimination and the right to freedom of expression, association and peaceful assembly” (McDonagh, 2013:55).

### **1.7. The background of violence against lesbian persons in Africa.**

In 26 countries homosexuality is recognized by the law but in more than 20 African countries it is banned and illegal, and in 8 of these countries it is punished by death or one can go to jail for 10 years. Homosexuality is a criminal offence in Algeria, Angola, Nigeria, Malawi, Kenya, Zimbabwe and Tanzania among many other States. In South Africa same-sex practice is legal, however there is a huge gap between legal rights and social acceptance (Htun & Power, 2006). Black lesbians are confronted with different kinds of marginalization. In Uganda homosexuality has been shaped and described as something “unnatural” by a number of influential churches, and one can spend up to seven years in jail for practicing same-sex sexual acts or for being a homosexual (Okonda, 2018). In Zambia human rights activists often face the risk of punishment, even serving time in jail for debating homosexual rights. The legal status of homosexual activity in Africa, compared to the rest of the world, may be seen in Figure 1.1 overleaf.

Over the past years lesbian persons have become increasingly visible in African countries, they are no longer willing to remain hidden. Lesbian persons have been fighting to accomplish social recognition and acceptance by the state, their families and communities (Kollman & Waites, 2009). Lesbian persons have challenged long standing discriminating laws, fought for equal rights and equal recognition in the eyes of the law. As per Jacobs and Potter (1998), lesbian persons have been fighting for recognition and respect. However, by ‘coming out’ they have become easier targets for those who hate and wish to harm them. The increasing visibility of lesbian persons has made them to be a population more vulnerable to different forms of



**Figure 1. 1: The legal status of homosexual activity in Africa compared to the rest of the world**

*Source: Screenshot from <https://www.equaldex.com/> [accessed 19 April 2019]*

violence. According to Butler, Alpaslan, Strümpher & Astbury (2003), ‘masculine’ lesbians, often referred to as ‘butch’ have been mainly vulnerable to victimization because gender expression indicates their sexual orientation and they occasionally need to ‘come out’ to people about their sexuality (2003). The Oxford Dictionary (2013) defines ‘butch’ as a lesbian self-identifying individual with masculine features or manlike in appearance or in ‘behaviour’ and defines ‘femme’ as lesbian self-identifying individuals with feminine features or someone who takes a ‘traditional’ female role. As per Herek & McLemore (2013:309), “...gender expression is an important part of lesbian culture, social and sexual relationships; femme lesbians are often invisible to the wider community, while butch lesbians are hyper visible and more vulnerable to attack precisely because they do not conform to social expectations of women’s appearance”

In spite of the increasing recognition of the LGBT community, many African countries have come to the fore in opposing the decriminalization of homosexuality and granting LGBT person’s legal rights (Ibrahim, 2015). A group of African countries have forged alliances in opposing initiatives to afford greater protection to LGBT rights (Cock, 2003). One of the main arguments used against the protection of LGBT persons and justification of violence toward lesbian persons is that homosexuality is un-African, suggesting that homosexuality is a consequence of colonial rule brought to African countries by the European colonist. This

justification has also resulted in increasing violence and hatred toward LGBT persons. It also implies that before colonization there was no practice of homosexuality or same-sex sexual relations in Africa. This belief or argument appears to be commonly accepted as a legitimate justification for homophobic acts by state officials and individuals.

In Uganda, lesbian persons face tremendous abuse and human rights victimization, especially in public health facilities. According to Semugoma, Beyrer & Baral (2012), in Uganda healthcare providers (HCP) have little or no interest in helping lesbian people or taking detailed medical histories; as a consequence, they miss out on important health information about their sexuality and are therefore unable to convey or provide necessary and appropriate care. It does not just end there. The other challenge that lesbian people face is being misdiagnosed with disease due to the lack of information about their medical history and sexuality. Furthermore, for some lesbian individuals sexual and reproductive service provision is very difficult, because they are unable to access health services as couples (Barbara, Quandt & Anderson, 2001). As per Freedom and Roam Uganda 2013 report, this challenge has led to poor utilization of these health services by lesbian people which frequently results in unwanted babies and high rates of abortion by lesbian woman (Jjuuku, 2013). Another challenge that is faced by lesbian individuals in Uganda is the continuous interruption of access to medical services because of the homophobic conditions. This occasionally includes harassment by the police and other health workers (Barbara, Quandt & Anderson (2001). Lack of confidentiality and restrictive laws exacerbate the issues, these prevent lesbian individuals from accessing health facilities (Freedom and Roam Uganda, 2013).

Homosexuality and same-sex activities are banned in Barundi, where lesbian persons are not lawfully and socially accepted. According to Knight & Wilson (2016:58), coming out in Barundi “is to put one’s life in danger, and it is a path that must be travelled carefully. It takes a lot of prudence not to be stopped by the police, to avoid discrimination and to risk social exclusion”. As a result, lesbian persons fear ‘coming out’ about their sexualities to their families and communities, they hide their sexualities because they do not want to risk putting their lives in danger. In most of African countries lesbian persons face stigmatization and discrimination which prevents them from seeking justice and accessing health care services. The law against homosexuality denies lesbian persons medical care and as a result they do not disclose their sexual orientation (Meyer, 2003). Lesbians therefore abstain from talking about their sexual issues with the health workers, which also worsens not only discrimination and

stigmatization but also worsens the state of lesbian health, adding to higher rates of sexually transmitted diseases (Judge & Nel, 2008).

Similar to most African countries, in Nigeria lesbian persons face different forms of victimization by the state and private individuals. Nigeria is one of the very religious African country, with a population of 167 citizens divided in half between Christians and Muslims, yet reunited by homophobia and their restriction of homosexuality (Zabus, 2013). According to Wagner, Serafini, Rabkin, Remien & Williams (1994:28), "...religion-induced homophobia remains a factor that cuts across the ethnic disparities and prevails whenever homosexuality or transsexuality is broached". In January 2014, Goodluck Jonathan, the former President of Nigeria, signed a Bill prohibiting same-sex marriage in Nigeria. The Bill outlines that persons who engage in same-sex acts will be sentenced up to 14 years in prison. With this Bill being signed into law, lesbian persons face victimization including discrimination against, rape and arbitrary arrest. The situation in Nigeria got worse a couple of years ago when the Nigerian Government introduced a new law that banned homosexuality and same-sex marriages further (Nossiter, 2014). In November 2015, The African Charter advised the Nigerian government to review the Bill and, to forbid violence against homosexual persons, also to ensure that people who are practicing same-sex 'acts' have equal access to human immunodeficiency virus (HIV) prevention methods including treatment and care facilities.

Olmstead-Rose (1991), a gay rights activist., argued in his 1991 article called "Hate violence: symptom of prejudice" that a national atmosphere of intolerance had caused an increase in hate crimes directed at homosexual people, resulting in the 'universal victimization of homosexual persons' Individuals, government institutions, and laws label lesbian people as people who are not deserving of respect and who are a danger to social order. African government officials, including state leaders, have been quoted condemning homosexuality and any type of same-sex acts and labelling it 'immoral' and 'un-African'. In one news report, the former President of Zimbabwe Mr Robert Mugabe publicly called people who are into same-sex relations cruel and stated that they do not deserve human rights. The president of Uganda demanded that the Uganda Criminal Investigations Department arrest all lesbian and gay persons. In Tanzania the Minister of Home Affairs, Mwigulu Nchemba, threatened to shut down all NGOs promoting Gay and Lesbian Rights, while the current President, John Magufuli, stated that "even cows disapprove of same-sex relations" (Dunton & Palmberg, 2006). The former President of Zimbabwe, Mr Robert Mugabe, was previously quoted in the news referring to homosexual persons as being "worse than dogs and pigs", he went on to say that homosexuality "degrades

human dignity, it's unnatural and there is no question ever of allowing these people to behave worse than dogs and pigs" (Dunton & Palmberg, 1996:12). In Gambia, former President Yahya Jammeh endorsed the legislation against homosexuality and said that if he discovered any lesbian or gay person in his country, he would kill them. On 27 September 2013, he presented his speech to the United Nations and he said that "homosexuality in all its forms and manifestations which, though very evil, antihuman as well as anti-Allah, is being promoted as Human Right by some Powers", and he also stated that these powers "want to put an end to Human existence" (United Nations General Assembly, 2013). In Malawi, the government and people have hostile views regarding homosexuality and people who practice same-sex activities, and any act of homosexuality is a punishable crime.

Various studies have shown that homosexuality has been part of African countries for a long time. Dunton & Palmberg (1996:8) argued that in South Africa the gay and lesbian community started growing in 1968 and it was apolitical, "but towards the end of the 1980s a number of Gay and Lesbian organizations emerged in South Africa who aligned themselves with the ANC's Freedom Charter and asserted Gay Rights as Human Rights". In Zimbabwe the discussion on Homosexuality only emerged in 1994 after the organization representing Gays and Lesbians in Zimbabwe (GALZ) advertised in one of the papers for its gay and lesbian counselling services. Even so, many African leaders have claimed that homosexuality is not part of African culture and that it is something that is "imposed" or "adopted" from the Western culture. The legalization of homosexuality in most African States and protection of lesbian persons have been rejected and homosexuality has been banned through discriminatory laws. "African 'traditional values' have been viewed as obstacles to LGBT Rights, indeed as enemies of freedom, progress and 'modernity' in general" (Thoreson, 2008).

Furthermore, according to the Amnesty International Report, in countries such as Uganda, Zimbabwe and Malaysia where same-sex relations is illegal, lesbian persons face assaults, beatings and life detainment for violating the law and going against the 'nature' (in Dworkins & Yi, 2003). Lesbian persons are victimized and denied the rights of freedom access to governments services unless they hide their actual sexual identity, and this is done through certain laws. In addition, lesbian persons fear reporting cases of abuse because they fear that in most instances the officials who are supposed to be protecting them are often the perpetrators of biased crimes against them. Dworkins and Yi (2003) supported this stating that lesbian women fear going to the police for help because sometimes the police are the perpetrators of beating and assaulting the very same persons they should be protecting. Amnesty International

(2001:32) elaborated on this by stating that “perceived or actual sexual orientation has been found to be one of four categories that make a female prisoner a more likely target for sexual abuse”

In Africa, lesbian persons experience marginalization, violence, discrimination and loss of dignity. In countries like Kenya and Zimbabwe lesbian persons engage in sexual and marital relationships with the opposite sex in order to hide their sexual orientation or gender identity from people. Homosexual students have been reported to have been chased away by their teachers in Kenya. In Uganda, the government banned and imposed fines against media organs, journalists and theatre groups that presented a neutral perspective on same-sex acts (Bjuhr & Regnander, 2012). In Cameroon lesbian persons are imprisoned for any practices of same-sex acts. In Nigeria one faces a death penalty if found guilty of practicing same-sex acts. In South Africa dozens of lesbians have been murdered in the last couple of years because of their sexual orientation. Victimization of lesbian persons is frequently grounded on opinions of same-sex sexual orientation by features of a person’s appearance and conformity with gender roles.

South Africa among other African states has pledged through its Constitution to protect persons regardless of their sexual orientation and to protect basic human rights of citizens, however, lesbian persons have been exposed to violence and discrimination. Studies show that lesbian persons are still confronted and victimized in most parties of the world even in those countries that have legalized same-sex marriage. Ungar (2000:104) noted that violence mainly targeting lesbian persons is sometimes ‘administered’ by state authorities and “either ignored or tacitly encouraged by a government with a constitutional responsibility to do the opposite”. When state officials or authorities, including the law enforcers, condone and commit violence against any human being, it leads to an atmosphere of fear which can fuel human rights violations (Ungar, 2000). There is a great need for states to intervention in challenging victimization and discrimination of lesbian persons.

Conclusively, lesbian persons are still facing drastic punishments and being victimized for being lesbian, even in countries where same-sex relationships are recognized by the law. Lesbian persons in African countries are constantly confronted with different forms of hate crimes, violence, discrimination and abuse, mainly targeted because of who they are. Many lesbian individuals are continually experiencing difficulties and legal barriers with respect to health care, adoption, employment, safety, education, access to government facilities such as

applying for housing and other government benefits (Brudholm, 2015). Lesbian persons or persons perceived to be lesbian are still victimized, arrested, beaten and even murdered.

### **1.8. Discriminatory laws against lesbian sexuality in Africa.**

Africa has a high percentage of countries that condemn homosexuality. According to the survey that was conducted by the International Gay and Lesbian Association (ILGA) in 2007, 40 out of 53 States in Africa in some way banned same-sex relationships. In most African States violence against lesbian persons is on the rise and often encouraged and protected by anti-gay laws (Herek, Berrill & Berrill, 1992). States have imposed anti-gay laws and have used them to attack lesbian persons or repel attention away from their own transgressions and weaknesses, they have tried to use homosexuality as fitting scapegoat for alleged social ills, such as failure in morality or law and order (Amnesty International Publications, 2001:5). Discriminatory and criminalizing laws against homosexuality should be the biggest concern for everyone (Herek, Berrill & Berrill, 1992). The United Nations High Commissioner for Human Rights (UNHCHR) former commissioner argued that “Laws criminalizing homosexuality pose a serious threat to the fundamental rights of LGBT individuals, exposing them to risk of arrest, detention and in, some cases, torture and execution. Criminalization perpetuates stigma and contributes to a climate of homophobia, intolerance and violence” (United Nations High Commissioner for Human Rights 2011:1).

In Nigeria homosexuality is illegal and the government has endorsed a law which forbids activist, friends, family members and any allies to support homosexual persons. The Nigerian government has implemented law which bans homosexuality and it stipulates that “ a person who enters into a same-sex marriage contract or civil union commits an offense and is liable on conviction to a term of 14 years imprisonment; a person who registers, operates or participated in gay clubs, societies and is liable on conviction to a term of 10 years imprisonment; a person or group of persons who administers, witnesses, abets or aids the solemnization of a same-sex marriage or civil union, or supports the registration, operation and sustenance of gay clubs, societies, organizations, processions or meetings in Nigeria commits an offence is liable on conviction to a term of 10 years imprisonment” (Obidimma & Obidimma, 2013:42). The legislation further mentions that any heterosexual associate or supporter” ...who administers, abets or aids” any practice of homosexuality or same-sex sexual acts will be punished by at least ten years in prison (White, 2013).

In South Sudan, Somalia and Nigeria homosexual acts are a serious offence and punishable by death. In Uganda, Tanzania and Sierra Leone homosexuality is punished by a life imprisonment. In Algeria homosexuality and same-sex sexual activity is a punishable offence with a fine up to 2000 Algerian Dinars and 2 years in prison (Kretz, 2012). In Angola the adoption of a law that will retract homosexual practice or provision against homosexuality is currently in process (Knight & Wilson, 2016). In Botswana anyone who allies with homosexual persons or has information of any “person against the order of nature” faces a sentence of up to seven years in prison (Englander, 2011). In Ghana homosexual same-sex sex is punishable by three years imprisonment (Knight & Wilson, 2016). The Zimbabwean Parliament presented a Bill in September 1995 banning homosexuality and any same-sex sexual activities. The Constitution Court in Uganda presented its first draft banning the promotion of ‘Unnatural Sexual Practices’ in 2014. The Bill provided varied definitions of sexual acts that are banned in Uganda and these crimes are punishable with a life sentence (Bjuhr & Regnander, 2012).

Regarding discriminatory laws that are used to punish LGBT persons, three central justifications have been applied to justify these laws: “...moral values (mainly based either on religion or traditional African values); the threat to the heterosexual family; and dangers presented to the welfare of children and the youth” (Rudman, 2015:27). Discriminating laws limit the protection of liberty and privacy of lesbian persons, prohibiting them from being able to engage in sensual activities of their choice and denying them their right of freedom. They further prohibit gay clubs, societies, and organizations that fund these types of bodies. The International Gay and Lesbian Human Rights Commission (IGLHRC) reported that, “...blackmail and harassment of gays and lesbians are rife in sub-Saharan Africa and legislation of this nature aggravates an already critical situation” (Rudman, 2015:19). This amounts to a direct violation of the basic human right to dignity. Additionally, laws that criminalize same-sex relationships violate the right to dignity. Exposing lesbian persons to discrimination is indeed violates the right to human dignity. “The discriminatory laws create systems of denunciation similar to the ones used in Nazi Germany and Apartheid South Africa to locate and imprison citizens either engaging in same-sex or inter-racial relationships” (Rudman, 2015:17). Discriminatory laws threaten LGBT individuals with imprisonment, and also condemn any non-heterosexual marriages including gay clubs, societies or organizations. “Discriminatory laws furthermore motivate partners to turn on each other if it is discovered that they have engaged in homosexual act” (Rudman, 2015:17). Discriminatory laws further violate various number of freedoms established by the African Charter, namely; freedom of



expression, association and assembly. Authorities and citizens should work together and act quickly to fight for and protect lesbian persons and persons who are perceived to be lesbians from violence.

Discriminatory laws have shown that most countries have no tolerance for homosexuality, and same-sex acts or 'diversified sexualities'. The discriminatory laws that have been imposed by governments also restrict NGOs in promoting human rights protection, fighting against lesbian victimization and providing necessary services to lesbian persons. They forbid organizations which display and support same-sex acts to provide services for a sexual minority population. Additionally, some of these laws allow individuals to engage in discriminatory and violent acts against lesbian persons without fear of legal consequences (Herek, Berrill & Berrill, 1992). Furthermore, discriminating laws that have been created to punish and forbid same-sex acts have led to an increase of victimization and even killing of lesbian people and also denying lesbian persons to access government or state services such as healthcare.

Through these discriminatory laws lesbian persons are deprived of their human rights and they have become vulnerable to HIV because they are excluded from HIV prevention strategies, educational campaigns and other sex education (Herek, Berrill & Berrill, 1992). Individuals and organizations who want to offer such services to assist lesbian persons in preventing this disease have been discouraged and banned from doing so. Meyer (2003) stated that this prevented those that are at risk the opportunity to access HIV education and prevention, exposing them to more risks, further reinforcing the internalized stigma, and thus putting them in great danger of HIV infection. By disclosing their sexuality, lesbian persons are sometimes unable to access information regarding HIV and tools to help them protect themselves and their partners from exposing themselves to HIV and related diseases. Criminalizing laws that have been amended to prohibit same-sex relations forces lesbian persons to live in fear of being harassed, tortured, victimized by strangers as well as criticism, they also deny lesbian persons their right to freedom, dignity and other basic human rights (Gregory, 1990). In the African commission report on persons living with HIV/AIDS, the commission raised concerns regarding discrimination by facilities of medical treatment. The report noted that the criminalization of same-sex acts in countries such as Zimbabwe is a hindrance to the provision of medical treatment (Ibrahim, 2015).

In February 2014, the former African Commissioner Special Rapporteur of Human Rights defenders in Africa, Commissioner Reine Alapini-Gansou, expressed concerns regarding

physical violence, harassment, hostility, and arbitrary detention that are perpetrated against human rights defenders who are assisting with minority right disputes in the wake of the law in African countries (O’Flaherty & Fisher, 2008). Gerber & Gory (2014:404) stated that “...the extent to which these laws are being actively enforced appears to be increasing, States including Uganda, South Sudan, Barundi, Liberia and Nigeria are endeavouring to further criminalize homosexuality rather than repealing these laws”. In 2010, a Malawian gay couple was convicted of unnatural acts and indecency after they held an engagement ceremony, and they were sentenced to 14 years in prison with hard labour.

### **1.9. LGBT violence in the South African context**

South Africa is well known for its diverse culture and religions which signal and portray unity and acceptance through its religions and culture (Steyn & Van Zyl, 2009). It is also the first African State that placed sexual orientation under the protection of its Constitutional Law. However, its history has been destroyed by many awful incidents against humanity (Crush, 2001). The country has a dark history of discrimination and prosecution against LGBT persons (Van Vollenhoven & Els, 2013). Since 1872, same-sex sexuality was prohibited by the Sexual Offence Act 20A. Same-sex sexuality was punishable with 2 years in prison or a fine of up to R400 which was later increased to R4000 in 1988. During the Apartheid era, about 900 LGBT youth were forced by the Defense Force to undergo medical therapy, behavioural therapy and gender reassignment with many forced therapies.

Nevertheless, lesbian persons in South Africa have won major legal battles including decriminalization of same-sex marriages, gaining rights in adoption, insurance, immigration, inheritance and alteration in sex description (Reddy, 2009). However, hate crimes toward lesbian persons have increased dramatically in the past decades. Hate crimes against lesbian persons have included arbitrary interference with their privacy, arbitrary, “...discrimination and denial of care in health settings, discriminatory treatment including in health, education” (O’Flaherty & Fisher, 2008:152). Similar to other African States, violence toward lesbian persons is also perpetrated by the state, government officials and private individuals. The former South African President, Mr Jacob Zuma was quoted at the Heritage Day celebration in 2006 when he said homosexuality was a disgrace to the nation and to God (Sokupa & Majova, 2006:4).

Furthermore, different studies that have been conducted reveal that lesbian individuals experience various kind of hate crimes because of their sexuality in their daily lives. A study

that was conducted by Judge and Nel (2008) in Gauteng discovered that 70 percent of homosexual identifying persons including lesbian persons had experienced physical violence and harassment in their communities. An online study conducted by the Love Not Hate Campaign affirmed that 44% of lesbians that were interviewed indicated that they had experienced discrimination due to their sexual orientation, and 88% stated that they did not report or lay any charges to the police because of further victimization. Hall and LaFrance (2007) also noted that 93% of lesbian identifying persons experienced discrimination, harassment and physical threats because of their preferred sexual orientation.

According to the ActionAid (2009) report, about 66 percent of survivors of hate crimes who identified as lesbians in Western Cape said they did not report their attacks to the police because they would not be taken serious; 25 percent said they feared revealing their sexual orientation to the police and 22 percent said they were afraid of being abused by the police (ActionAid, 2009:7). The report also revealed that most lesbians were sceptical about reporting perpetrators to the police because most of the time they had been accused of “wanting” it and the opinion that they deserved to be “corrected” therefore they preferred not reporting the matter.

In addition, it is also important to note that there is a growing evidence that “corrective” rape has become one of the most reported acts of violence targeting lesbian persons and it is contributing to the increasing rates of HIV infection amongst black lesbians and health services for survivors to prevent HIV transmission such as post-exposure prophylaxis (PEP) are scarce (Mkhize, Bennett, Reddy & Moletsane, 2010). For some it is very hard to even keep their jobs let alone to find a job because they are discriminated against and stigmatized daily. The Constitution is also not easily accessible and available to everyone, especially those who have limited resources such as education. Similarly, other barriers such as the lack of information in government departments for lesbian persons about the nature of assistance and support in launching the complaints of victimization hinders lesbian persons from seeking legal assistance. In September 2005, a lesbian woman was hit by a bottle during the Johannesburg Pride parade and nearly died. In February 2006, Zoliswa Nkonyana was beaten, stoned and stabbed by a gang of men in front of her home Cape Town for being lesbian. In December 2004, another lesbian was raped in Soweto. All these cases are among many cases of violence toward lesbian persons in South Africa. Violence toward lesbian persons provides current instances of how culture, masculinity and heterosexism suggest that violence is somehow justified and normalized in communities (Anderson, 2010).

According to a report by the South African Human Rights Commission (SAHRC) the growing phenomenon of “corrective rape” across the country where lesbians are being raped by men with the belief that they are being “corrected” for their sexual orientation is very alarming (Adam & Moodley, 2013). News reports have also shown that “corrective rape” has now become the most prevalent hate crime against lesbian persons living in rural areas and townships in South Africa. It is mostly black lesbians from the rural and township areas who are particularly at risk and lack an appropriate support system, who are also disadvantaged by social, cultural and economic discrimination (Carroll & Itaborahy, 2015). Survivors of “corrective rape” who were interviewed by ActionAid (2009:71) reported that they experienced verbal abuse before and during the incidents and they were about being “taught a lesson” and being “shown how to be a real woman and what a real man tasted like”. In other words, they were raped because they did not conform to heterosexual gender identity and had stepped outside the boundaries of what society expects them to be as females. As a result, most victims of this particular hate crime left their homes and went into hiding for protection.

Among different sources that expose lesbian persons to violence or hate crimes are religious influences, economic marginalization, not conforming to gender norms and also being rejected by family or community. According to Humphrey (1999), in order to understand hate crimes against lesbian persons, one needs to understand where routine discrimination transpires and the factors which may make one vulnerable to hate crimes. In this context, this merely means observing and investigating ways in which churches, families, religious and traditional communities often engage in perpetrating intolerance of lesbian persons.

Lesbian persons experience different types of violence in their daily lives by their families, communities, co-workers, police and strangers. Different studies have shown that violence against lesbian persons occurs when they are assaulted and abused by the people who should be protecting them: “men who are complete strangers keen to establish what they view to be transgressor’s ‘proper’ femininity; it is also perpetrated by acquaintances, friends and family” (Mogul, Ritchie & Whitlock, 2011:72). Lesbians have experienced constant abuse in their schools from their educators and from their fellow school mates because of their sexual orientation. They have experienced violence in the hands of the police as well. In many instances the police authorities have been known for associating with the perpetrators, for being perpetrators themselves, and for being ineffective by exposing lesbian persons to secondary victimization. Because of these disturbing experiences, the police have created a devastating

lack of faith and posed doubts in the law enforcers and the government justice system in general (Herek, Cogan & Gillis, 2002).

According to Takacs (2006:197), there are three categories of experiences which lesbian persons encounter when they go to the police for help. The first set is the interaction that when lesbian person encounters verbal insults from the police which are demeaning and subjecting lesbian persons to secondary victimization. The second set includes corruption, cases where the police sometimes comply with the perpetrators and occasionally the police authorities themselves are the perpetrators of violence. In the third set, the police authorities are sometimes preoccupied with lesbian sexuality and how lesbian persons engage in sexual intercourse with other females instead of concentrating in the case.

In South Africa churches are the most important space where public attitudes and moral responses take place, they are also a place in which socialization and communal life occurs (Vincent & Howell, 2014). However, this is also the space in which abuse and discrimination transpires towards lesbian persons. The notion that homosexuality or same-sex sexual acts are “unchristian” has shaped many peoples’ attitudes about lesbian persons in South Africa. Although some churches have tried to fight against the marginalization and abuse of lesbian persons and have tried to take major steps in addressing such matters, there are church leaders that preach against homosexuality and label it as a ‘demonic’ act. In South African churches the idea that always circulates is that same-sex acts or homosexuality are ‘unchristian’, conventional church teachings tend to form communal attitudes and opinions towards lesbian persons or homosexual persons (Jugde & Nel, 2008). Askew & Allen (2015) argued that “...although these are influential churches, including mainstream churches that reject this homophobic stance and have taken significant steps to address homophobic both in theology and practice, many individual church leaders continue to use the pulpit to demonize lesbians”. Church leaders have described same-sex relations or homosexuality as a disorder and a sin. Lesbian persons are made to believe that being lesbian is not normal. It gets to a point where they are being punished and shamed for being attracted to the same sex. This often results in failure of self-acceptance. These acts and attitudes of intolerance towards lesbian persons contribute to discrimination and violence against lesbian persons.

Being black and also identifying as lesbian in South Africa is quite a big challenge. The idea of a home is based on heterosexual ideals, those who do not conform to the heterosexual ideals or the society’s expectation are not considered as humans and as part of the society (Kiwauka,

1988), and therefore they are victimized and abused. Similarly, in South Africa homosexual feelings are viewed as something that is ‘unnatural’, ‘un-African’ and against nature, and they are perceived as negative and should be prayed for. The basic explanation behind the views is the idea that homosexuality is a western disease that is hostile to African norms and values. “Homophobic appeals to ‘tradition’, ‘African culture’, and the ‘rights’ of communities take their power from well-founded resentment of a long, and continuing, history of western cultural imperialism” (Kretz, 2012:11). ‘*Ubutabane*’ or ‘*Izitabane*’ (Homosexuality or Homosexuals) are the terms commonly used by South African leaders and pastors to refer to homosexual persons. It is therefore obvious that in South Africa sexuality is intensely structured by cultural and social norms. Reddy, Mkhize & Potgieter (2007:11) stated that “...to be black and lesbian in South Africa seems to be a burden riddled with much anxiety. Years after the formal adoption of a remarkable constitution, we are celebrating the legalization of same-sex unions. A damper on these hard-won rights is that the majority of our citizens – women – continue to struggle against cultural attitudes that deny them the right to live with their identities”.

Reports of violence suggest that hate crimes toward lesbian persons seem to be occurring in countries that have developed laws that are meant to protect lesbian persons and have granted lesbians human rights in their Constitution (McDonagh, 2013). Reports of violence towards lesbian persons also show a perfect demonstration of a big gap between the principles of the Constitution and public attitude towards lesbian persons. The extent to which lesbian persons have been attacked indicates that the South African Police Service and government have failed to protect lesbian persons against victimization. Additionally, hate crimes lead lesbian women to live in fear as they constantly propel a message that communities or certain individuals do not like them.

#### **1.10. Legal status in the South Africa Constitution.**

In addition to understanding hate crimes toward lesbian persons, it is important to understand the primary legal perspective for lesbian persons under the South African Constitution. A constitution is a “basic law setting down principles that must be followed in the political system, and to which all legislation must conform” (Dunton & Palmberg, 1996:6). It holds guidelines in terms of how the state should be ruled and constituted and it also provides for human rights and duties that are granted to the citizens. Human rights are rights that protect individuals and maybe group of individuals from the abuse of power, they are arbitrary guidelines that seek to maintain the relationship between the government and citizens

(Freeman, 2011). The South African Constitution grants gender equality, gender equity and democratic rights such as the immunity of every individual (Cook, 2003), however, according to Gontek (2009), in South Africa there is a wide gap between theory and practice. The Constitution grants recognition and protection of lesbian rights and other basic rights by law, but these are not put into action by the state and individuals.

South Africa gained independence in 1994 and adopted a new constitution in May 1996, and its constitution has been praised for being the most progressive in the world. The Constitution is instituted on the Rule of Law. It advocates for the values of non-sexism, non-racialism and the improvement of human rights at large (Himonga & Bosch, 2000). The Republic of South Africa Constitution grants every citizen including minority groups' equal rights and protection of these rights including sexual rights. It grants gender equality, gender equity and democratic rights such as the freedom of every individual. The 1996 South African Bill of Rights protected by the constitution includes Section 9 which guarantees equality and prohibits discrimination on many different grounds, including gender and sexual orientation. As such, the Constitution approved direct laws that outlaw discrimination based on sexual orientation or gender identity and provides legal recognition of same same-sex relationships. Among other primary considerations, the Bill of Rights also guarantees human rights such as social security, diversity, sexual orientation, class, race, gender and protection from harm. Briefly, the Constitution states that everyone living within the South Africa jurisdiction has the right to make their own choices and to exercise their rights as long as they do not infringe on other persons' rights.

In 2006 South Africa became the fifth country globally and the first in Africa to grant same-sex marriages the recognition officially under its legislation which was very progressive in some parts of the country (Gontek, 2009). South Africa granted LGBT persons constitutional protection via section 9(3), and in parts of the country lesbian persons enjoy freedom of association granted by the constitution. LGBT organizations are permitted to organize and function within and outside the country, and issues concerning LGBT persons take place in public. According to Duntan & Palmberg (1996) this was a very crucial step in improving human rights culture.

Additionally, many other judicial and policy reforms in South Africa have attempted to fight for the abolition of laws that discriminate against homosexual persons. The Employment Equity Act of 1998 comprises sexual orientation among groups that are protected from

discrimination; under the Medical Schemes Act of 1998 same-sex relationships are included; the Domestic Violence Act of 1998 further developed its definition of domestic relationships to identify cohabitation by unmarried individuals including same-sex couples; and the Rental Housing Act of 1999 also promotes equality and prohibits any acts of discrimination on all grounds (Gutto, 2001). Cock (2003:97) pointed out that the "...promotion of equality and prevention of unfair discrimination Act of 2000 further commits the government to promoting equality on the grounds mentioned in the Equality Clause". Section 9 of the Bill of Rights guarantees equality and prohibits discrimination on various grounds including gender identity and sexual orientation. The South African Schools Act of 1996 swore to construct a system of education that is free from 'racism and sexism and all other kinds of unfair discrimination and intolerances' (Butler et.al, 2003).

Act 108 of 1996 under the Republic of South African Constitution has been guided by a variety of global human rights mechanisms including both the Beijing Declaration and its Platform for Action as well as the Convention on the Elimination of Discrimination Against Women (CEDAW) (Neuwirth, 2005). The Equality Act, which was passed in year 2000, outlaws hate crimes specifically targeting people purely because of their identification as part of a particular group, and, in theory, this includes crimes on basis of sexual orientation (Harris, 2004). In 1997 South Africa became part of CEDAW and also signed up at the fourth conference on Women under the Beijing Declaration and its Platform for Action pledging to eliminate all forms of sexual violence (Banda, 2006). In this Convention it was highlighted that South Africa has a duty to respond to any form of violence directed to any individual by recording and adequately investigating bias motives and prosecuting perpetrators of violence against any individual, thus prohibiting discrimination and upholding the equal protection of the law in accordance with the Universal Declaration of Human Rights and the State obligation under the International Covenant on Civil and Political Rights (Steiner, Alston & Goodman, 2008). It was also highlighted that failing to address cases of hate crimes against lesbian persons and has created a lack of trust in the police authorities and has created an essence of impunity and hinders a lesbian person's ability to access justice (Perry, 2016).

According to Duntan & Palmberg "(1996:1), the inclusion in the new South African Constitution of a clause prohibiting discrimination on the grounds of sexual orientation should be a cause of celebration to everyone". Unfortunately, this has not been the case for most lesbian persons in South Africa as they have been denied their rights to live freely without fear of being victimized based on their sexual orientation. Most black lesbians are unable to enjoy



their rights and to access protection through the Constitution and the legal system because they come from vulnerable and poor areas. In spite of what is written in the Constitution on social marginalization, violence and discrimination of lesbian persons is still prevalent in this country and it perpetrated mostly by political leaders, religious leaders and community members. Lesbian persons are discriminated against and denied equal rights and equal treatment because of their sexual identity. Judge & Nel (2008) stated that although a few South African LGBT individuals currently enjoy these rights granted to them, they remain subject to a wide range of inequalities and legal gaps

With all the substantial progresses lesbian persons in South Africa still endure discrimination and violence because of their sexual orientation. South African activists have recorded and reported numerous cases of abuse and hate crimes against lesbian persons including ‘corrective rape’ and even murder, and the level of violence and discrimination towards lesbian persons clearly demonstrate that all these promises of equality by the constitution remain vague. Due to the recognition of sexual rights and protection by the law, most lesbian women disclosed their identity in a strongly homophobic society, yet at the same time faced attacks from state members and individuals, attacking them because of their sexual orientation and female nature (Gontek, 2009). As the visibility of lesbian persons increases every day in South Africa, issues concerning their protection remain unnoticed and not regarded as of importance.

Among African States, South Africa has the highest rates of violence perpetrated towards women including lesbian self-identifying persons. The ‘mentality’ about appropriate or ‘natural’ ways of gender expression, specifically how women or girls should conduct themselves has made lesbian persons and those who go against these customs’ potential targets for this type of violence (Connell, 2014). Despite the legal protection on the books, lesbian persons experience discrimination in the workplace and for some it is very hard even to find a job or keep the job because of discrimination (Cain, 1997). Lesbian identified students face endless harassment from educators and fellow students because of their sexual orientation (Grossman, 2009). NGOs and Public News have reported dozens of hate crimes directed towards lesbian persons, including rape, murder and other instances of abuse directed against black lesbian persons in South Africa. Discrimination and violent attacks have become part of lesbian persons’ daily lives and these victimizations are attacks against female nature and their sexual orientation as lesbian women (Gontek, 2009).

As per Judy Kollapen, the former chair of the South African Human Rights Commission, violence that is directed towards lesbian persons can be traced to two elements. The first is the existing prejudice stemming from the historic separation of people into groups with differential values, while the second is the wide spread problem of violence within South African society (Harris, 2004). Various reports have shown that violence against black lesbian persons in South Africa “occurs in a broader context of violence, including sexual and gender-based violence, misogynistic social attitudes, and patriarchal cultural norms” (Msibi, 2012:520).

A huge gap between principles of the constitution and the public attitudes towards lesbian persons is demonstrated in the daily reports of violence and discrimination towards lesbian persons (Butler et.al, 2003). Negative public attitudes towards lesbian persons and against people who are assumed to be lesbian go hand in hand with violence, and discrimination as well as extreme prejudice go hand in hand with a wide-ranging pattern, and the right to protection is weakened significantly by the state’s failure to implement laws efficiently (Gordon & Meyer, 2007). The recent studies of hate crimes against lesbian persons have also indicated a contradiction with the observation that respect and acceptance of lesbian rights in South African society have increased significantly through the past years (Meyer, 2003).

The extent in which lesbian persons are victimized shows clearly that even though South Africa has changed its laws regarding criminalizing homosexuality, the law has failed to protect lesbian persons and the public opinion about lesbian persons remains the same. Cook points out that after 22 years since the adoption of one of the most progressive constitution in the world, the level of violence and discrimination that is targeting lesbian persons shows that the promise of equality in the Constitution remains vague (2003).

In conclusion, Cook (1994) argued that in South Africa the effective implementation of the laws which recognize and seek to ‘protect’ homosexual persons is lacking, Constitutional protection has been greatly weakened by the state’s failure to enforce them adequately. Protection granted by the Constitution are just in theory not in practice, there seems to be a huge gap between the regulation and the application of these rights as lesbian persons are still experiencing discrimination, marginalization and violence. Reports of violence against lesbian persons demonstrate a perfect picture of a huge gap between the principles of the South African Constitution and negative public attitudes towards lesbian persons. According to Herek (1996), negative attitudes go hand in hand with a wide pattern of discrimination, violence, and hate crimes against individual who are known or presumed to be in same-sex sexual relations. The

South African government has a duty to ensure that every citizen living within its rule enjoys their human rights as guaranteed under the country's Constitution and International Law without fear of being victimized because of their sexual orientation or gender expression. The South African Government through the Constitution has a duty to protect each and every citizen living within its rule and to ensure that everyone is able to access and enjoy basic human rights regardless of one's sexual orientation and gender expression.

### **1.11. Research problems and objectives**

South Africa was affected by apartheid where there was oppression and discrimination against black people by the white people. The apartheid regime affected millions of people. At the same time there was considerable discrimination against and oppression of LGBT people. In the transition to democracy the group that apparently has been overlooked is LGBT people. The LGBT people have fallen into the group of the disfavoured people, and they have been considered as humans that are valueless and not deserving of respect and protection. The South African Constitution forbids discrimination on the basis of sex, gender and sexual orientation; however it has failed to put in practice human rights of the LGBT community. This particular population among other marginalized minority groups, is still discriminated against, abused and targeted for who they are. This shows that the LGBT population is excluded from certain citizenship rights.

### **1.12. Key research questions to be asked.**

- What are the hate crimes experiences of lesbian persons in South Africa?
- What does it mean to identify as lesbian and to be racially black in South Africa?
- What are the origins opposition towards LGBT persons?
- What is the cause of the huge increase of hate crimes against LGBT people in South Africa?
- What is the role of the state and the international community in protecting lesbian persons?

### **1.13. Broader Issues to be investigated.**

The study looks broadly at hate violent experiences of persons identifying as lesbian from the international context as well as within the South African context mainly looking at the role of the state in protecting lesbian persons' human rights. To understand the perpetration of hate crimes against lesbian persons and the exclusion of lesbian persons in social settings, the study seeks to investigate the debate of sexual identities and attitudes towards acceptance of lesbian persons.

#### **1.14. Conclusion.**

The African Union, International Law and United Nations have played a huge role in backing the founding of human rights systems in most African countries and have affected the improvement of justice and human rights in African states positively (Donnelly, 2013). Furthermore, the African Commission on Human & Persons Rights is one of the international bodies which seeks to monitor rights of African citizens (Steiner, Alston & Goodman, 2008). However, some of the principles that have been adopted to assure human rights for every citizen at a regional and global level have remained unfulfilled (Donnelly, 2013). The issue of human rights in African states seems to be affecting mostly the underprivileged and minority groups including lesbian persons. Throughout the African continent legal rights are fading for lesbian Persons (Seidman, 2001). There is widespread human rights abuse occurring in many parts of Africa and it often occurs under the supervision of the government or state. Sudan, Zimbabwe and Cote D'ivoir are among the leading States that are reported for major violence against human rights, violations include extrajudicial execution, mutilation, and raping lesbian persons (House, 2014). Violence and marginalization of homosexual persons in African countries has pushed a strong debate on the amount and meaning of human rights, the rights and reality of homosexual persons; and government intervention over such occasions (Dunton & Palmberg, 2006). Denying any person their basic Human Rights is the first step towards inhuman, degrading and cruel treatment (Amnesty International Publications, 2001:4).

Furthermore, the Convention on the Elimination of all Forms of Racial Discrimination (CERD) and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) characterizing discrimination as “any distinction, exclusion, restriction or preference which is based on any ground... and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing of all rights and freedoms” (Rudman, 2015:87). In theory, “...homosexual persons including lesbian persons are protected by the equality clauses in the constitutions of their countries of origin or domicile, the equality clause in the regional agreements and the equality clauses as set out in a number of international human rights instruments, such as CEDAW and ICCPR” (Rudman, 2015:27).

In addition, little research has been done focusing on factors that can assist in promoting LGBT rights and wellbeing within their families and community settings. As such, family acceptance can be an essential element to protect lesbian individuals from exclusion from community

settings such as churches and schools. According to Ryan, Russell, Huebner, Diaz, & Sanchez (2009), young adults who ‘come out’ about their sexual orientation to their families and have been accepted report high levels of self-esteem and social support which leads to lower levels of substance use, suicidal attempts and risky sexual behaviours. The importance of family acceptance should be discussed in community settings, educate parents about the negative effects of rejection. The discussion of issues around acceptance and rejection should not try to change people’s beliefs and cultures but rather help families and communities to understand sexual diversities and how rejection can affect lesbian self-identifying individuals’ health (Herek & Garnets, 2007).

Rudman expressed that violence on the basis of sexual orientation leads to discrimination and violates the rights to equality, integrity and dignity of a person (Rudman, 2015). As such, the South African government has an obligation to take immediate steps to honour its promise of equality, non-discrimination, and a life of dignity for lesbian persons as failing to do so betrays the Constitution and constrains the rights of homosexual persons (Long, Brown & Cooper, 2003). All state officials should condemn violence on the basis of sexual identity or sexual orientation publicly.

In conclusion, different experimental research is required to assist in the identifying of hate crimes on the basis of sexual orientation or gender identity, given that hate crime is very common among the LGBT community and that hate crimes are less likely to be reported to the police compared to other crimes (Herek, Cogan & Gillis, 2002). Because of a lack of education, police biases and lack of experience of hate crimes based on sexual orientation or gender identity may not be perceived as hate-motivated crimes (Marzullo et.al, 2009). In addition, more studies are needed to document the events of hate crimes against the lesbian persons and to expose the effects of hate crimes abuse for victims and the society in general. This chapter focused on the important observations or characteristics of sexual orientation and homosexuality. It also focused on hate-motivated violence and discriminatory laws against LGBT persons from the international level to the local level. To this effect, the term “hate crime” has been discussed as the main theme of this study and in relation to homosexuality and LGBT sexual preferences. The following chapter presents the theoretical framework using two chosen theories, “Social Identity Theory” and the “Responsibility to Protect Theory” as a means of understanding the nature of hate crimes that lesbian persons experience.

## **CHAPTER TWO: THEORETICAL FRAMEWORK**

### **2.1. Introduction**

Over the past decades, hate crimes against lesbian persons have been part of vast public interest and have raised concerns of human rights protection and the state's duty to protect lesbian persons. Many lesbian persons are affected by violence and victimization due to their perceived or actual sexual orientation daily. According to the Organisation for Security and Co-operate in Europe & Office for Democratic Institutions Human Rights, hate crimes or bias-motivated crimes perpetuated because of one's sexual orientation or sexual identity affect the security of people, their network and social orders (Swiebel & Van der Veur, 2009). Tajfel & Turner's (1987) 'Social Identity Theory' offers imperative experiences with respect to the social personality bases of prejudice, discrimination and intergroup conflict, by finding these phenomena as resulting from group-based arrangement and self-enhancement motives. The 'Responsibility to Protect Theory' is based on protecting citizens against any form of violence. This section is going to discuss these two chosen theories in detail as a theoretical framework for this study. The use of these two theories is going to help in understanding the type or nature of hate crimes that lesbian persons experience with regards to this research.

### **2.2. Social Identity Theory**

According to Duntan & Palmberg identity is "...the sense a person has of her/his own individual nature and personality and of the way this leads the individual to identify with specific groups of people (for instance, by way of nationality, language group or sexual orientation) (1996:1). The Social Identity Theory was originally articulated by Henry Tajfel and John Turner back in the 1970s and the 1980s. The theory presented the idea of a social way of life as a manner by which one can explain the behaviour of the intergroup. It is a classic psychological theory that endeavours to explain intergroup conflict as a component of group-based self-definition (Hogg, Van Knippenberg & Rast, 2012). Social Identity Theory originates from the idea that individuals describe their own specific characters or identities with regard to social groups and that such portrayal or identification work to secure, protect and support self-identity (Mangum & Block, 2018). According to Tajfel (1978) and Tajfel & Turner (1979), the creation of group identities includes both the categorization of one's 'in group' concerning an 'out group' and the inclination to see one's own particular group with a positive bias vis-à-vis the out group. Social Identity theory opened up extensive areas for research concerning the

construction of social identities, the incentives behind identification, the variability between different social identities, and the identity's effects on persons, groups, institutions, and varied social groups (Capozza & Brown, 2000). According to Abrams (1996), Social Identity Theory can also be defined by looking at the ascribed and self-ascribed identity. In general, ascribed identity is defined as an identity which is developed from something attributed or credited by others. In this sense, LGBT persons' gender identities are socially constructed as they are expected to marry the opposite sex of theirs. Ascribed identity is fixed, characterized by examples such as ethnicity and race. Ascribed identity is also characterized by a defined and unified identity, whereas self-ascribed identity is defined as an identity that is obtained by one's choice and by means of oneself. For instance, one's sexual preference or religion is self-ascribed identity. Self-ascribed is also defined as identities that are less deterministic and tend to focus more on identities in the current era.

According to Jenkins (2014), social identification is a multi-dimensional grouping or mapping of the human world and one's place in it as people and as individuals from collectivities. Mael & Ashforth (2001) viewed social identification as being part or belong to a group of persons. Social identification is rooted from the categorization of persons, the status and distinctiveness of the group, the essence and qualities of the out-groups, and the features that are conventionally linked with the group information. Social identification prompts actions that are cooperative with the identity, sustenance for societies that represent the identity, conventional views of oneself as well as other people, and effect that are traditionally associated with group development, and it supports the initiators of identification. Stryker & Serpe (1982) and Turner (1982) stated that social identification provides a fractional answer to the question, "Who am I?" This includes knowing your own identity, knowing other person's identity, their knowing your identity, and people knowing who they think they are (Jenkins, 2014:2).

When Jenkins (2014:6) defined identity, he talked about arrangement which suggested assessment, and contended that grouping is hierarchical, interactional and social. A and B may be different from each other at one point, yet the two individuals form the meta-classification: "Hierarchies or collective identification may conflict with hierarchies of individual identification" (Jenkins; 2014:7). He expressed additionally that "...to identify someone could be enough to decide how to treat them" (Jenkins, 2014:7). Although certain qualities and mentalities are related normally to individuals from a given social class, acknowledgment of the classification as a meaning of self does not really mean acknowledgment of the

classification as a meaning of self does not really mean acknowledgment of those qualities and attitudes (Mael & Ashforth, 2001). “To identify, an individual need not expend effort toward the group’s goals; rather, an individual need only perceive him or herself as psychologically intertwined with the fate of the group” (Ashforth & Mael, 1989:89).

Furthermore, according to the Social Identity Theory, individuals tend to group themselves as well as other persons into different social classifications, for example authoritative participation, religious association, gender, and age accomplice (Tajfel & Turner, 1985). These examples recommend that individuals might be organized in separate classes, and individuals may use different classification techniques. Categorization of individuals is characterized by prototypical abilities abstracted from the individuals (Turner, 1985). Social identification is therefore the idea of collective unity or a sense of belonging to a particular group. Just to make a simple example, a soccer player may characterize himself or herself in terms of the groups with which she or he classifies himself or herself. The person identifies himself or herself as an original member of that particular group and sees the purpose of the group as their own.

Tajfel & Turner’s (1979) Social Identity Theory suggested that there are three mental procedures engaged with assessing others as “us” or “them”, for example, “in-group” and “out-group”, and these occur in a specific order.

- The first step is **Social Categorization**. According to Tajfel & Turner (1979) in order to understand and identify objects they need to be categorized in a very similar way people categorize people including themselves in order to comprehend the social environment. Some examples of social categorization include gender, race, age, color and affiliations. Similarly, if and when people are assigned to a category that will indicate things about those individuals and people also discover things about themselves by realizing what categories they belong to. The appropriate behaviour is defined by reference to the norms and standards of groups to which one belongs (Hogg & Reid, 2006). Social categorization is one clarification for prejudice attitudes, that is, “them” and “us” mentality, which prompts “in-groups” and “out-groups”.
- The second step is **Social Identification**. In this stage Tajfel & Turner (1979) argued that one adopts identity of a certain group that he or she has categorized him- or herself as belonging to. For instance, if one has categorized herself or himself as a fighter, the odds are one will adopt the identity of a fighter and will start to act in a way they believe fighters act which means adjusting to the standards and norms of that particular group.



- The last stage is **Social Comparison**. Social comparison is a development by which individuals compare their status and social standing with other groups. Once there has been categorization of people as a component of a particular group and they have been identified themselves with that group then people tend to compare that group with other groups (Tajfel and Turner, 1979). In order for self-esteem to be maintained the in-group needs to compare positively and favourably with other groups (Branscombe & Wann, 1994). This is important for understanding prejudice because once two groups distinguish themselves as rivals, they are compelled to compete in order for members to sustain their self-esteem. Additionally, competition and hostility between groups is in this manner not just a matter of competing for resources but also the consequence of contending identities (Mercer, 1995). In this instance, heterosexual individuals want to maintain a positive status and social identity favorable over that of LGBT individuals' social identity. In order to maintain self-esteem, one must perceive his or her in-group as having a higher social standing than an out-group.

Furthermore, a positive in-group bias can be clarified because the in-group comes to take on a self-relevant role, where the individual characterizes him- or herself through the group (Haslam & Ellemers, 2005). In this manner, comparisons between groups are emotionally loaded and equivalent to self-other comparisons, with group threats interpreted as threats to the self (Tajfel, 1974). Turner (1975) described the in-group-out-group relationship as entailing a "competition for positive identity", out-group categorizations deliberately framed to boost self-evaluations. In this way, treatment of out-group members is directly identified with the intention to secure or upgrade the self (Tajfel & Turner, 1979). As per Cohen & Warton (1995), social identity effect depends on insurance and improvement of self-concepts. Threats to the self-concept would be identified instinctively with the most grounded identity effects. Research facilities and field studies have asserted that when groups pose a risk to each other, the impacts of identification increase.

According to Rosario, Schrimshaw, Hunter & Braun (2006), the development of lesbian identity is a difficult process. Unlike members of other minority groups, most homosexual individuals including lesbians are not raised in a community of similar identifying individuals from whom they engage about their identity and who support their identity. The development of lesbian sexual identity is a complex and often difficult process. Unlike members of other minority groups such as ethnic and racial minorities, most homosexual individuals are not raised in a community of similar others from whom they learn about their identity and who

reinforce and support that identity. Homosexual persons are often raised in communities that are either ignorant of or openly hostile towards homosexuality. Sexual identity is also known as the “coming out process”.

### **2.3. Background to the South African context.**

Black lesbians in South Africa are currently targets of social, cultural and political violence. While such violence may target black lesbians mostly, it is perceived that it may also have implications for the quality of life of every South African citizen (Mkhize et al, 2010). The violence that lesbian persons experience affects their human dignity and the state has the duty to protect them. Lesbian persons are effectively denied their legal rights in a significantly prejudicial way. Roberts & Reddy (2008) stated that South Africa is profoundly engaged in aggressive, and in some cases arch-conservative, contestation about what is ‘normal’ in terms of masculinity, femininity and sexual culture. This goes against the idea that every South African citizen is entitled to equal opportunities that are presented by the constitution, which guarantees protection of every citizen against any type of discrimination. It also goes against the Responsibility to Protect Theory which articulates that every citizen should be protected by the state and it is the state’s duty to ensure that every human right is protected.

Furthermore, despite South African Constitutional protection founded on the principles of equality, human dignity and freedom, discrimination and violence based on gender and sexual orientation against lesbian persons remains. Lesbian persons and particularly black lesbians are the subject of violence and hate crimes in townships and rural areas. Hate crimes against black lesbians, triggered by culturally endorsed homophobia and hate speech, frequently result in mental, physical and emotional harm inflicted on them (Nel & Judge, 2008). Consequently, these lesbian persons face problems, isolation, discrimination, rejection and ignorance. The explanation for victimization of lesbian persons has come from the perception that lesbianism is unethical and immoral, and also from beliefs that lesbian persons should not be afforded protection by the Constitution, and the perception and attitude that same-sex practice should be outlawed. “The religious and cultural intolerance emanating from varied notions of what is correct or proper gender behaviour and what is not” (Mkhize et al, 2015), for instance, society’s expectations, how a female person should present herself to her society and how she is supposed to dress, walk and behave.

In addition, researchers like Gibson & Gouws (2005) have argued that transforming the quality of life for women in South Africa has had no effect in terms of security. Between the year of

2003 and 2008, the number of reported rape crimes increased in South Africa, according to the Crime Prevention and Rehabilitation of offenders' premise that only 1 in 20 rapes is reported (Naidoo, 2013). The high levels of hate crimes in South African societies is terribly underestimated at every level. Recording and monitoring rape cases and other types of hate crimes is a great problem. Furthermore, hate crimes are usually used to send a strong, violent and intimidating message from the perpetrator to the victim taking place both in physical and verbal form (Jacobs & Potter, 1998). A study that was conducted by OUT LGBT WELL-BEING results demonstrated that around 44 percent of lesbians who were interviewed had encountered separation in their everyday life, because of their sexual preferences; additionally, over the past two years in the Western Cape and KwaZulu-Natal, lesbian women were most likely to encounter discrimination at least half the time (Francis, 2017).

Sandfort, Simenel, Mwachiro & Reddy (2015:11) stated that classifications of identity are constructs and keeping in mind that they might be conveyed deliberately in the name of an attention on a specific arrangement of injustices and towards political activism, these categorizations serve the interests of a society built on hierarchized divisions. The violence that many women face is based on different dimensions of their identities such as race, class and sexual orientation. Since heterosexuality is such a profoundly rooted cultural norm, individuals who do not identify themselves as heterosexual usually encounter high levels of discrimination and isolation religiously, cultural and legal from their societies. "In south Africa the term 'lesbian' cannot be automatically separated either from questions of masculinity or from issues of heterosexuality, the term constitutes an "imposition" over most South Africans' linguistic descriptors for sexual and reproductive identities" (Mkhize, Bennett, Reddy & Moletsane, 2010:12).

Likewise race plays a basic role in the experiences of lesbian persons in South Africa: "...while it would be both absurd and counterfactual to suggest that lesbians racialized as white, for example, do not experience homophobia, gender based-violence or hate speech, it is simultaneously true that dominant cultures of 'safe space' for lesbian women tend to exclude all but well-resourced women, the majority of whom are white", thus further arguing that white lesbians as a group tend to feel 'safer' in their sexual orientation than lesbians of other racial classifications in South Africa (Mkhize, Bennett, Reddy & Moletsane,, 2010:25).

A study that was conducted by OUT-LGBT WELL-BEING makes it obvious that black lesbian persons from the townships and rural areas have been the target of hate crimes because

of their sexual identity or perceived social orientation (Francis, 2017). “Multiple identity-based discrimination and violence which result in severe vulnerability, exclusion and invisibility must be a critical consideration in post-apartheid south Africa; particularly in considering the duty of the state to protect women from violence and to further respect and promote rights entrenched in our constitution” (Mkhize, Bennett, Reddy & Moletsane,, 2010:25).

Hogg & Williams (2000) attempted to apply cognitive grouping to social groups, and they argued that cognitive grouping involves “judgmental accentuation” where cognitive categories incite the increased salience of recognizing features between classifications, exaggerating classification contrasts, associated with social groups, this guideline could be used to clarify biased and distorted impression of distinctions between groups. In this manner, the previous findings of hate crimes against lesbian persons demonstrated that negative attitudes drove or led lesbian persons to psychological groups by exaggerating the negative characteristics of the out-group (lesbian persons). Consequent studies have endeavoured to demonstrate the broad variety of socially vital phenomena that result from such arrangement, for instance, negative evaluations of the out-groups, stereotyping, and inability to distribute resources to out-group members (Jenkins, 2014).

#### **2.4. The Responsibility to Protect**

The Responsibility to Protect norm was coined by the International Commission on Intervention and State Sovereignty. The commission developed the theory to solve the legal and policy dilemmas of humanitarian intervention. The commission focused on the relationship between sovereignty and intervention, specifically on how the international community should “...respond to gross and systematic violations of human rights that offend precept of our common humanity” (Stahn, 2007:102). The fundamental subject was “the idea that sovereign states have responsibility to protect their own citizens from avoidable catastrophe – from mass murder and rape, from starvation – but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states” (Stahn, 2007:99). In this manner the state has a duty to adhere to the Responsibility to Protect Theory. By obeying the principle, they guarantee that their subjects are protected from a wide range of human rights infringement, especially those affecting human respect and life (Reardon, 2010).

The Responsibility to Protect also known as R2P communicates that it is the duty of a state to protect its citizens from violation against humankind, discrimination and Genocide (ICISS Report, 2001). The central idea of the R2P is that states must act to prevent humanity crimes

through what the World Summit Outcome Document describes as “diplomatic, humanitarian and other peaceful means” (Evan, 2006). Oxford (2011) stated that the Responsibility to Protect standard places a moral weight on states to protect the human privileges of its citizens. The commission perceived that the fundamental and primary obligation to protect citizens resides with the state whose individuals are specifically affected by violence or whose human rights are enormously abused and that it is only if the state is unwilling or unable to fulfil this responsibility, or if it is the culprit itself, then the matter becomes the duty of the international community to intervene (Stahn, 2007).

Furthermore, Evans (2006) postulated that regardless of the fact that the Responsibility to Protect principle empowers the obligation to protect and intervene, it does not consider this carefully when it comes to gender and sexuality issues, rather it focuses more on issues concerning conflicts. In this regard, Jayakumar (2014) expressed that there is a great need for sexual orientation perspectives to be part of the Responsibility to Protect structure of the global policy and universal relations as an establishment for protection and intervention.

The 2001 International Commission on Intervention and State Sovereignty (ICISS) defined the alternative principle of the Responsibility to Protect, which concentrates on the duty of all states to protect its citizens, and this principle also focuses on the legal and appropriate duty of outside states to intervene and protect (Global Centre for the Responsibility to Protect, 2015). The Responsibility to Protect “...populations from genocide, war crimes, ethnic cleansing and crimes against humanity” was therefore universally accepted during the United Nations Summit in 2005 (General Assembly, 2005). The principle stipulated that states have the duty to protect their citizens from any form of violence. It also stipulated that the international community has the duty to intervene and assist in protecting the citizens. In addition, the Responsibility to Protect Theory ensured that the International communities protected and acted on any form of form of violence against humanity, and by accepting the responsibility to protect, it had issued a sincere pledge that it could not disregard (Global Centre for the Responsibility to Protect, 2015). In addition, “Under the concept of Responsibility to Protect matters affecting the life of citizens and subjects of a state are no longer exclusively subject to the discretion of domestic ruler but are perceived as issues of concern to the broader international community (e.g., third states, multilateral institutions, and non-state actors)” (Stahn, 2007:101). Moreover, “Each individual State has the responsibility to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity. The responsibility entails the prevention of such crimes, including their incitement; the international

community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means to help to protect populations” (Evan, 2006:703).

The Responsibility to Protect Theory sought to address four types of brutality crimes, crimes against humanity, genocide, ethnic cleansing and war crimes. According to the ICC Act, crimes against humanity range from rape, enslavement, deportation, torture, extreme forms of discrimination, murder and other cruel acts which cause incredible suffering, or serious injury to body or to mental or physical health of persons (Jones, 2012). When these acts of violence are systematic and widespread, they constitute crimes against humanity (Jones, 2012). Furthermore, according to the Responsibility to Protect, the term to ‘ethnic cleansing’ is “understood to describe forced removal or displacement of populations, whether by physical expulsion or by intimidating through killing, acts of terror, rape and the like” (Global Centre for the Responsibility to Protect, 2015:2). Preventing humanity crimes means constructing inclusive governmental organizations, strengthening state capacity by improving economic assistance and reforming the rule of law or intervene directly through arbitration when violence appears to be looming (Evans, 2006). The Responsibility to Protect “... fosters a return to normalcy, together with the restoration of the rule of law, respect for human rights and justice” (Stahn, 2007:448).

The Secretary-General’s 2009 report introduced three pillar strategy for Responsibility to Protect implementation:

- Pillar 1: Every State has a duty to protect its citizens from the four types of atrocity crimes;
- Pillar 2: The broader universal community has the obligation to empower and help individual states in meeting that responsibility; and
- Pillar 3: In accordance with the United Nations Charter the international community has a duty to take proper action and intervene in a sensible and significant manner if a state is failing to protect its citizens (Secretary-General, 2009).

In general, three pillars of the Responsibility to Protect strategy provide different aspects of prevention forms in violence against humanity and situations that may lead to suffering. The international community must work logically through these three pillars of the Responsibility to Protect to attain the ultimate goal of protecting humanity. “Each state has a responsibility to protect its citizens: if a state is unable or unwilling to carry out that function, the state abrogates

its sovereignty, at which point both the right and the responsibility to remedy the situation falls to the international community” (Sohn, 1982:87).

The Responsibility to Protect Theory entrenched in human rights protection and the international humanitarian law, and “...the norm squarely embraces the victim’s point of view and interests, rather than questionable State-centred motivations, and it does so by configuring a permanent duty to protect individuals against abusive behaviour. Such duty is a function of sovereignty and should be fulfilled primarily by the State concerned” (Chidambaran, Peiris and Karzai, 2008:447). Stahn (2007:448) said: “The protection duty encompasses a continuum of prevention, reaction, and commitment to rebuild, spanning from early warning, to diplomatic pressure, to coercive measures, to accountability for perpetrators and international aid”.

## **2.5. The Application of the Responsibility to Protect and Social Identity Theory**

Social Identity Theory states that the in-group will discriminate against the out-group to boost their self-image (McLeod, 2008). Tajfel’s (1969) argument on cognitive aspects of prejudice verified that in order to build their self-image people improve the status of the group which they belong to. For instance, heterosexual individuals who believe that sexual attraction or sexual behaviour between persons of the opposite sex or gender is the only justified practice therefore believe lesbianism is wrong and not justified. This can increase heterosexual peoples’ image by discriminating and holding prejudiced views against lesbian persons who in this case are the “out-group”, the group that they (heterosexuals) do not belong to. Therefore, they divide the world into “them” and “us” based on a manner of social categorization (Tajfel, Billig, Bundy and Flament, 1971). This also demonstrates that bias between genders or sexual orientations may bring about homophobia and may also result in hate crimes against lesbian persons.

The use of the Social Identity Theory has assisted in understanding lesbian identity in the context of Kwa-Zulu Natal. To understand attitudes of heterosexual persons towards lesbian persons, it also helps one to understand classification of identities. Furthermore, the theory assists one to understand lesbians’ experiences of hate crimes.

The International Commission on Intervention and State Sovereignty recognizes that states authorities are responsible for the safety, life, and welfare of their citizens, and that they are also responsible to citizens internally (Stahn, 2007). Every citizen of this country is part of a society, a society that is headed by the government. Therefore, the government has a duty to protect its citizens from any kind of violence or discrimination. The government or the state

has the duty to protect its citizens from human rights violations. It is the responsibility of the state to protect lesbian persons and it is also the responsibility of the community to protect lesbian people. The application of the Responsibility to Protect in this study will help to understand the duty of the state to help in protecting lesbian persons. The use of the Responsibility to Protect theory assists in understanding the duties of the state in protecting its citizens.



## **CHAPTER THREE: MOVES BY UNITED NATIONS HUMAN RIGHTS MECHANISMS TO ADDRESS VIOLENCE BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY.**

### **3.1. Introduction**

For the past centuries lesbian persons have been reported to have experienced different kinds of hate crimes and homophobic violence, frequently combined with a lack of sufficient legal protection on grounds of sexual orientation and gender identity (Herek, 1995). Human rights mechanisms have documented extensive evidence of violence and abuse directed at lesbian persons by law enforcement officers, police authorities and prison guards. Lesbian persons are “disproportionately subjected to torture and other forms of ill-treatment, because they fail to conform to socially constructed gender expectations. Indeed, discrimination on grounds of sexual orientation or gender identity may often contribute to the process of the dehumanization of the victim, which is often a necessary condition for torture and ill-treatment to take place” (United Nations Human Rights, 2002:23). The international community and LGBT human rights activists have expressed great concerns about violations of these human rights to the United Nations and other human rights mechanism. As such, the United Nation Convention Against Torture prohibits any form of victimization, both physical and psychological, and discrimination that is committed by any persons in an official capacity or with their assent (Amnesty International, 2001).

While other states are trying to protect and legalize homosexuality and lesbian rights, some states are fighting against and opposing criminalization of homosexuality and granting lesbian persons basic human rights. Different laws have been designed by states to discriminate, punish, ban and criminalize homosexuality and same-sex relations acts. African countries such as Nigeria and Zimbabwe have made it clear that they do not recognize homosexuality and they are not willing to decriminalize homosexual acts in these countries. Lesbian persons have been discriminated against by their own communities, disowned by their families, mistreated in schools and hospitals. They face different types of hate crimes of verbal and physical attacks, being beaten, sexually assaulted and killed. “The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity” (UN Committee the Elimination of discrimination against women General Recommendation No.28 of 2010).

As per O’Flaherty & Fisher (2008), reports of violence against lesbian persons have caused a wave of abuse that is cruel, inhuman and degrading treatment to the LGBT community. Previous reports have shown that hate crimes towards lesbian persons by individuals and by the state are still predominate and that they are highly underreported. Lesbian persons are targeted by violence at the hands of individuals, state actors and private actors. Violence towards lesbian persons has been documented in different regions. They have been ill-treated in their homes, communities, by educators, employers, medical centres, and even denied medical treatment. They have been abused and publicly humiliated by health practitioners and have been forced to participate in procedures such as sterilization and “so called” therapies to change their sexual orientation, violating their rights to privacy and denying them their human rights (Pickup, Williams & Sweetman, 2001).

Several studies have revealed that discrimination against lesbian persons has a serious impact on their health and other essential social activities for lesbian people. Meyer (2003) noted that stigma, discrimination and other human rights violations of lesbian persons contributes to the high HIV incidence and prevalence among lesbian persons. Violations of lesbian rights does not only hinder their access to health facilities testing, prevention and treatment services but it also makes lesbian persons vulnerable to the disease (Meyer, 2003). Studies also indicate the battle for the protection of the human rights of lesbian persons and the battle in combatting violent acts of hate crimes that is targeting lesbian persons. Protecting LGBT persons from discrimination and violence does not necessitate constructing new laws and new human rights explicitly for LGBT persons, nor establishing new International Human Rights standards (Donnelly & Whelan, 2017). The legal obligations of states to protect LGBT human rights are well recognized in International Human Rights Law in the origin of the Universal Declaration of Human Rights and are successively agreed upon by the international human rights treaties (McGill, 2014).

Nevertheless, at the international level, initiatives seeking to tackle hate crimes against lesbian persons are moving to the right direction, the concept of ‘sexual orientation’ and ‘gender identity’ is now deployed in rights or entitlements for reinterpretation and improvement of LGBT human rights under the United Nations and other human rights mechanisms (Human Rights Watch, 2005). The United Nations human rights mechanisms held that States have a duty under the provision of the International Human Rights Treaty to protect persons from discrimination on basis their sexual orientation, or any type of violence motivated by hate. “One of the founding principles of the United Nations is our faith in the dignity and worth of

every person, without distinction based on race, colour, sex, language, religion, property, birth or other status. Discrimination in all of its forms continues to undermine this principle” (United Nations Development Programme Administrator Helen Clark, 10 December 2009). The United Nations human rights institutions and LGBT human rights organizations have been working together towards the promotion and protection of LGBT rights, including protecting lesbian persons from discrimination and abuse at all state levels and decriminalization of homosexual acts (Mertus, 2004). LGBT movements have established domestic movements to work towards the inclusion of LGBT rights in all important human rights mechanisms and to promote and protect LGBT human rights including protecting this population (Donnelly & Whelan, 2017). Some courts of states have ruled discrimination based on sexual orientation or gender identity intolerable and unacceptable. Different laws have been established in different human rights treaties to protect the LGBT community from violence and hate crimes.

In 1977 the federal State of Canada became the first government in the world to include ‘sexual orientation’ in its anti-discrimination legislation (Waites, 2009). Around the early 1990s the Supreme Court in Canada updated its legislation and ruled that discrimination on basis of “sexual orientation’ was prohibited within its authority (Stychin, 1995:109). South Africa became the first African State to explicitly ban discrimination on account of ‘sexual orientation’ in its constitution (Dunton & Palmberg, 1996). The European Court of Human Rights then followed and ruled all sexual orientation discrimination intolerable and unacceptable under its jurisdiction (Timmer, 2011:117). The European Union’s Treaty included an anti-discrimination clause in its Charter of fundamental Rights, which includes sexual orientation following the lobbying by the International Lesbian and Gay Association (Swiebel, 2009:65).

The first main purpose of this chapter is to investigate and engage the reader with different types of hate crimes perpetrated towards Lesbian persons, including causes of hate crimes. The view that homosexuality is un-African will be discussed further. This chapter seeks further to discuss different reasons for underreporting, and data will be drawn from different sources. The second part of this chapter will provide a brief literature on sexuality and human rights that have occurred at the borders of several academic fields such as the contribution of the United Nations. The role of the United Nations and other human rights mechanism or global human rights institutions that are established to protect human rights, monitor, investigate and report human rights violations and any challenges regarding human rights will be discussed. Resilient solutions to human rights violations can be found from the local and international level,

however domestic implementation is crucial for the success of the international human rights system (Mertus, 2004:4). The role of States and international LGBT movements in promoting and protecting LGBT human rights will be discussed.

### **3.2. Identifying the subject group**

In this study the abbreviation ‘LGBT’ (Gays, Lesbians, Bisexuals and Transgender) is used to help the reader understand the subject group, however, the primary aim is to highlight hate crimes against lesbian persons, and this will be highlighted in other chapters. The terms LGBT and sexual minorities are used to describe the LGBT population efficiently, therefore they will be used interchangeably in this study. In addition, the term ‘population’ is used to describe a social group in which individuals self-identifying as lesbian may feel a sense of belonging and shared understanding. For the purpose of chapter, it is therefore of great importance to start by giving a brief literature of the term ‘lesbian sexuality’. The term ‘lesbian’ was coined by Jill Johnston attempting to describe female same-sex attraction or female homosexuality (Johnston, 1999). It is closely associated with the term ‘homosexuality’ or ‘homosexual’ acts (Cass, 1979). As per Diamond (2000), the term ‘lesbian’ refers to the sexual orientation of a woman who is sexually and romantically attracted to another woman. Diamond’s definition also aligns with Young and Meyer’s (2005), who argued that the term ‘lesbian’ is used to describe persons who are in same-sex sexual relations, attracted to or married to the same sexual identifying persons as them. Lesbian persons are also known or identified as ‘homosexuals’ (Young & Meyer, 2005). According to Ferguson, Zita and Addelson, (1981:176) “...a lesbian is a woman who has sexual and erotic-emotional ties primarily with women or who sees herself as centrally involved with a community of self-identified lesbians whose sexual and erotic emotional ties are primarily with women: and who is herself a self-identified lesbian”.

### **3.3. Types of hate crimes against lesbian persons**

#### **3.3.1. Homophobia**

Homophobia has caused Lesbian persons to be subjected to ‘legal’ violence that is made up of discriminatory laws and abuse by state authorities, ‘semi legal’ violence of abuse, killing, torture, and discrimination by law enforcers, and extra-judicial violence by individuals and by communities throughout the world (Ungah, 2000). This type of violence is highlighted by three principals, closely related types of state violence; ‘legal’ violence, ‘semi-legal’ police violence, and extra-judicial violence (Fox, 2014). The State itself is a perpetrator of violence, the courts,

the prisons, and various government organisations tolerate discriminatory and violent acts against lesbian individuals in their custody. Most democratic States, police agencies are equipped with laws and other principles that substitute unaccountable semi-legal violence against lesbians (Herek, 2004).

Homophobia operates mainly by "...rendering homosexuality invisible and, when this fails, by trivializing, repressing, or stigmatizing it" (Herek, 1990:316). According to Williamson (2000), homophobia includes negative and fearful acts towards or against homosexual persons, or negative attitudes about homosexuality, while Richmond and McKenna (1998) described homophobia as a hate or dislike based on the personal, social and cultural beliefs of 'heterosexual persons' towards homosexual persons. Homophobia is deeply rooted in both the society and the state, and lesbian persons are often regarded as a threat to public order and a cultural imposition from corrupt western societies (Ungar, 2000). In addition, homophobia has caused lesbian persons to be victims to 'legitimate' crimes made up of prejudiced laws and practices by states officials (Koppelman, 1994). Government and states in greater parts of the world such as South Africa and United States of America have vowed to protect citizens from any act of discrimination and violence, however, lesbian persons are still being targeted, sodomized and called creatures by their fellow citizens and governments officials including presidents themselves (Brown, 2012).

### **3.3.2. Gender based violence**

According to Dunne, Humphreys & Leach (2003:53), "It is impossible to draw a clean line between gender-based violence and violence on the grounds of presumed or known sexual orientation, gender identity, and gender expression". For instance, in most African states lesbian persons are victims of gender-based violence by men because they refuse to engage in heterosexual relations or refuse to date men. They are therefore considered to be disrespectful to cultural norms or towards men (Matebeni, 2011). In South Africa, violence that is directed against lesbian persons transpires within the context of the epidemic of gender-based violence (Abrahams, Jewkes, Martin, Mathews, Vetten & Lombard, 2009). The normalization of some behaviours and means of gender expression as appropriate or 'natural' for females and girls, makes all female persons who go against these norms' potential targets of violence gender-based violence (Herek, 2004). Dunne, Humphreys & Leach (2003) highlighted that the lack of addressing gender-based violence against lesbian persons has created a culture of impunity and hinders women's ability to access justice.

### **3.3.3. Verbal and physical abuse**

Verbal abuse and physical abuse that lesbian persons encounter due to their gender expression and sexual orientation can form or develop negative a self-image, shape public opinion, instil fear and shame, and hinder their ability to access public spaces and to seek redress or justice (Anguita, 2012). Verbal and physical abuse "...also creates and reinforces the climate of impunity within which, violence can escalate from verbal harassment and abuse to physical and sexual attacks" (Herek, 2004:58). A study that was conducted by Berrill (1990) in the United States revealed that "40% of lesbian persons have been threatened with physical violence and 94% experienced one or two types of victimization (including verbal abuse, physical assault, police abuse, weapon, assault, vandalism, and/or being spat upon, chased or followed, or pelted with objects)" (Berrill, 1990:275). Persons who experience or who have been victims of such attacks become afraid to seek help or tell others, because they fear that they will be exposed to secondary victimization by the police and fear their sexual orientation will be disclosed (D'augelli & Grossman, 2001).

### **3.3.4. "Corrective rape"**

'Corrective rape' is another form of horrific homophobic victimization of lesbian persons, usually accompanied by great violence and it is generally perpetrated by a group of people who usually claim that they want to turn the victim heterosexual (Mkhize, Bennett, Reddy and Moletsane, 2012). In South Africa, 'corrective rape' is used as a ruthless and cruel way to punish and oppress those who do not obey or conform to societal norms for gender roles, including sexual orientation (Judge & Nel, 2008). This form of brutal crime has been considered by society and the media as a hate crime because it is motivated by hate (Herek, Cogan & Gillis, 2002). According to the Triangle Project, an association working towards the improvement of LGBT rights in South Africa, rape can be regarded as a tool that is used to emphasize control by men over women's bodies and their behaviour, whether sexual orientation is an explicit factor or not (Anguita, 2012).

The notion that Lesbian persons need to be 'fixed' is a general rape myth that also poses a significant threat to lesbian identifying persons or persons who are in a lesbian sexual relationship (Herek, 2004). Lesbian persons are affected by this form of hate crime, with few incidents being reported due to fear of secondary victimization, and fear that reporting the incidents may hinder their access to healthcare and the justice system further in countries with poor socio-economic conditions (Judge & Nel, 2008). Dunton & Palmberg (1996) argued that

corrective rape is wrong and a violation to lesbian human rights, such hate reinforces and circulates prejudices among and within lesbian communities.

The Committee on the Elimination of Discrimination against Women conveyed serious concerns about sexual offences committed against women because of their sexual orientation. It also further expressed serious concern about the practice of so-called “corrective” rape of lesbian persons (World Health Organization, 2005). The Committee further noted that “Lesbian women face an increased risk of becoming victims of violence, especially rape, because of widely held prejudice and myths; for instance, that lesbian women would change their sexual orientation if they are raped by a man” (United Nations Human Rights, 2012:15).

Statistics of sexual violence reveal that South Africa is among the countries with the highest rate of reported sexual violence against women. The police crime statistics that were released in September 2015 revealed that between 2014 and 2015 only there were 53 617 cases of sexual assaults reported to the South African Police Services, and this means that on average 147 cases were reported per day (World Health Organization, 2015). In South Africa rape has transpired as a crime of great violence against lesbian persons, and media reports have shown that lesbians who have been murdered have been raped first. This shows the intensity of violence that goes hand in hand with rape (Brown, 2012). In addition, lesbian persons have often been victims of other types of violence by non-state actors. Reports have demonstrated that lesbian persons have been forcibly impregnated and forced into marriages as a punishment because of their sexual orientation and for transgressing gender norms (United Nations Human Rights, 2012).

### **3.4. Hate crime laws**

Many States have imposed a range of intimidating laws intended to maintain firm gender roles and apply sexual stereotypes. These laws often use elusive language to permit for maximum flexibility in the imposition of punishments against people who fail to conform to the authorities’ views of proper gender-specific behaviour (Brown, 2012). Laws against homosexuality violate lesbian rights to be free from discrimination, which is enshrined in Article 2 of the Universal declaration of Human Rights and also enshrined on other international human rights treaties. These laws also violate rights to be protected against unreasonable interference with privacy and arbitrary arrest (United Nations Human Rights, 2012:24).

As a result, countries such as the United States of America have established hate crime laws which protect LGBT communities and sexual minorities from state abuse laws that seek to

criminalize homosexuality. Hate crime laws have been derived from the 1968 Civil Rights Act, which allows federal punishment and prosecution of anyone who “...wilfully injures, intimidates or interferes with any person because of his race, color, religion, or national origin” (Meyers, 2018:153).

The United States Hate Crimes Prevention Act of 2009 permits law enforcement assistance to state and local jurisdictions in cases including physical harm “...because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity or disability of any person” (Newton, 2009). According to Lamble (2013:154), in the United States and Europe hate crime law is part of a global LGBT “equality” movement which combines emphases on decriminalization of sexual acts and criminalization of perpetrators of discrimination and violence against LGBT persons. Hate Crime Laws seek to end discriminating laws against homosexuality and to protect minority groups from States punishment on grounds of sexual orientation and gender identity. As a reminder, “Homosexual activity is usually punished with imprisonment, imposed for a term of anywhere from a few months to a life sentence and sometimes accompanied with hard labour or corporal punishment” (Brown, 2009:280).

### **3.5. Causes of hate crimes towards lesbian persons**

The following part of this chapter will be discussing different causes of hate crimes towards lesbian persons. Causes of hate crimes towards lesbian persons can range from negative attitudes by heterosexual persons, to beliefs about gender roles and gender identity constructed by social, cultural and religious beliefs (Morgan & Wieringa, 2005). There are many factors which can make lesbian persons vulnerable to violence such as “...geographical location, economic marginalization, non-normative gender expression, rejection by family, religious influences, lack of access to information and normalized use of sexual violence as a form of control” (Robinson, Bansel, Denson, Ovenden & Davies, 2014:133-138). Negative public attitudes, stigma and opinions towards lesbian persons also contribute to high levels of violence towards lesbian persons (Herek, 2000). The economic and social position of lesbian persons in South Africa and in most African countries has a major impact on their experiences, those who can afford middle-class life may not experience the same amount of prejudice and discrimination compared to those that cannot afford the same lifestyle (Mkhize, Bennett, Reddy & Moletsane, 2010). Those who are vulnerable socially and economically are mostly exposed to hate crimes (Levin & MacDevitt, 2013). A report by Mkhize, Bennett, Reddy & Moletsane (2010) revealed that black lesbians who are living in townships, rural areas, and informal



settlements are among the most marginalized and exposed members of the South African lesbian population.

Among many various reasons, identity politics, heteronormative beliefs and heterosexism have also been recognized and as the main causes of hate crimes against lesbian persons. This section seeks to provide a brief literature review of causes of hate crimes committed because of one's sexual orientation and gender identity.

### **3.5.1. Identity politics**

The term "identity politics" has been used in an extensive range of political movements and it is often associated with injustices experienced by certain members of social groups, especially minority groups (Bernstein, 2005). Heyers (2002:253) described identity politics as "...a mode of organizing [that] is intimately connected to the idea that some social groups are oppressed. That is, one's identity as a lesbian person in Africa, for instance, exposes her to violence, marginalization, stereotyping and exploitation due to their identity (See also Young, 2013). Brunt (1989:51) described the identity politics as "...politics whose starting point is about recognizing the degree to which political activity and effort involves a continuous process of making and remaking ourselves-and ourselves in relation to others". Identity politics refers to activities where individual persons connect or identify with one another as an affiliate of opposing groups constructed upon features such as race, gender, religion, and sexual orientation (Epstein, 1998).

### **3.5.2. Heteronormativity**

Heteronormativity is the infatuation with correcting or normalizing sexuality through discourses that display 'queerness' as different (Warner, 1993). According to Steyn and Van Zyl (2009), discrimination and violence towards lesbian persons is underpinned by heteronormativity. Heteronormativity is the myth where heterosexual persons believe that their sexual identity is 'normal' and 'natural' and therefore homosexuality is not normal and should not be practiced or displayed in public because it will encourage other persons to become homosexuals (De Castell, 1997). The assumption is that gender revolves around biological sex and that there are only two genders. The only 'acceptable' and 'natural' gender is only sexual attraction between two 'opposite' genders, hence it is the suite of cultural, legal and institutional practices (Kitzinger, 2005). As a result, in many societies the main idea is that heterosexuality is the only 'normal' and 'acceptable' sexual orientation and sexual relations or marital relations between two persons of the 'opposite' gender is acceptable.

### **3.5.3. Heterosexism**

Hate crimes that target lesbian persons happen within a broader cultural setting that is infused by heterosexism (Herek, 1990:316). Herek, defines heterosexism as an "...ideological system that denies, denigrates and stigmatizes any no-heterosexual form of behaviour, identity, relationship or community...heterosexism is manifested both in societal customs and institutions" (Herek, 1992:89). This definition shows that a person's perception of gender and sexuality can produce homophobia. Heterosexism "...is a crucial component for understanding anti-gay and lesbian hate as it suggests how cultural belief systems that consistently denigrate gay men and lesbians and describe them as not being 'real' men or 'real' women, perpetuate and encourage hate crimes" (Alden and Parker, 2005:325). Heterosexism provides an existing system of ideas and stereotypical beliefs that justify prejudice against homosexual persons as 'natural'. Therefore, it fosters opposing attitudes to homosexuality (Walls, 2008). According to Herek (1992:97), "Heterosexuality is equated ideologically with 'normal' masculinity and homosexuality is equated with violating the norms of gender". Heterosexism arises from culturally rooted negativity toward certain sexualities (Herek, 2004).

Furthermore, Herek (1990) argued that heterosexism is associated with sexual ideology. The belief that sexuality belongs only in the personal or private sphere of life creates a basis for stigmatizing homosexuality and also perpetuates its invisibility. In many instances, openly living homosexual persons or homosexual identifying persons are accused of 'flaunting' their sexuality to the public and this signals that they deserve to be harassed, assaulted and retribution (Mogul, Ritchie and Whitlock, 2011).

### **3.6. Reason for underreporting**

Different studies have shown that Lesbian persons encounter different types of victimization from the police and law enforcers when reporting cases of violence against them, as a result they end up scared or refrain from reporting or seeking help from the police (Lundy, 1993). Lesbian persons experience lack of assistance or support from the police, leading to fear of retaliation or fear of being further stigmatized, and lack of trust in redress mechanisms (Herek, 2004). Police officers have a lack of knowledge about sexual diversities and both the nature of the prohibition and redress mechanism (Herek, 2012).

When lesbian persons try to report or open cases of victimization, they encounter hideous treatment and fall into three categories. The first and largest category of communication is characterized by police verbally ill-treating and demeaning lesbian persons and subjecting their

families and friends to secondary victimization, Secondly, the police themselves are responsible for perpetrating violence against lesbian persons and also for being unhelpful and inefficient, this category includes instances of the police delaying investigation process, and sometimes supporting the perpetrators (Herek, 2004). In some cases, the police are often obsessed with why lesbian persons 'chose' to be lesbians instead of focusing in the case, as a result most lesbian persons have a lack of trust for the police and sometimes, they are reluctant about reporting perpetrators (Judge and Nel, 2008). Again, these negative experiences that lesbian persons encounter directly from the police creates lack of faith in the law execution and in the criminal justice (Young, 2011).

Furthermore, reasons for underreporting "...include low conviction rates intimidation by perpetrators; fear of retaliation, shame and stigma attached to sexual violence, fear of secondary victimization by state authorities, and lack of faith in police" (Anderson and Doherty, 2007:97). It has been reported that victims of sexual assault or rape lack access to social services or facilities that could assist them with support or any form of assistance (Garnets, Herek and Levy, 1990). They also fear being humiliated and being exposed as victims of rape in their communities, suffering psychological trauma and stigmatization, and fear of causing pain to their partners or families (Martin and Hetrick, 1988). The fact is that most offenders and perpetrators of any kind of violence are often people who are close to the victim for example, neighbours, family members or acquaintances (Garnets, Herek and Levy, 1990).

Stigma and myths that are associated with rape sometimes places the blame at the door of the victim by suggesting that the victim's behaviour somehow led the offender to rape her which can lead to reluctance to seek help (Torrey, 1990). This can also lead to further under-reporting, as rape victims suffer feelings of guilt, or fear of facing the blame of their community or family (Torrey, 1990). In line with this argument, the "stigma attached to sexual assault and the gendered domination it represents – where the attacker seeks to feminize the subject of the assault through the use of force – means it is likely that rape and other forms of sexual violence directed towards lesbian persons in South Africa are grossly under-reported" (Mkhize, Bennett, Reddy and Moletsane, 2010:71). As a result, many rape survivors only report the incidents after months or sometimes years. Another reason why lesbian persons are reluctant to report cases of assault to the police authorities is because they have a lack of faith in the ability of the South African Criminal Justice System (CJS) to offer them with appropriate services, to protect and treat them with dignity and respect, above all to support her claim to justice and to prosecute the offender (Judge and Nel, 2008).

### **3.7. Conceptualizing homosexuality as un-African**

Homosexuality has been described as unethical, ‘un-African’ and associated with western countries. “Homosexuality has been termed barbaric and alien to our culture” even though it exists, in many African countries it is stigmatized and condemned to be displayed in public (Morgan & Wieringa, 2005). This view has been instilled through different leaders in different countries, either through social public places such as churches and schools or from government (Morgan & Wieringa, 2005). Likewise, religion, culture and the law are the obvious main players in the condemnation of homosexuality and same-sex sexual acts. The practice of homosexuality is believed to be against the beliefs and traditional values of the African society and a destruction to the African morals (Francis and Msibi, 2011).

While some African leaders and institutions have been praised for playing an important role in fighting and supporting human rights in African countries, some African leaders believe that homosexuality is the result of colonialism and it is not part of African culture and religion and therefore should be stopped and those who practice it should be arrested and punished (Ward, 2002). Different African leaders have and stated that homosexuality is un-African and a violation to African values and beliefs, while countries such as Zimbabwe and Kenya have amended discriminating laws that have been made to abolish homosexuality and punish persons who practice homosexual acts (Donnelly, 1999). Among others, the former Deputy President of Kenya viewed homosexuality as ‘unchristian’ and ‘dirty’, stating that those who practice same-sex relations should be punished.

Ibrahim (2015:268) argued against the view that homosexuality is un-African stating that: “It should be made clear that homosexuality, tolerance or, for the matter, homophobia are not alien to pre-colonial or post-colonial Africa”. He argued that evidence exists that proves that same-sex sexual acts existed and were tolerated in Ancient Egypt, further stating that same-sex relations were legally recognized during that era, but were treated as a private matter (Ibrahim, 2015). In Sudan, Kenya and Angola, same-sex marriage was legally recognized; however, it was not something that was discussed or exposed in public (Ireland, 2013). In Ethiopia same-sex relationships were also tolerated but persons who practiced same-sex acts were labelled “God’s mistakes”. According to Ibrahim (2015), the claim was that Africans ‘are unique’ persons whose culture, ethics and customs totally despise same-sex sexual acts and homosexual practice and any other kind of ‘unnatural’ sexual practice.

Similarly, Murray and Roscoe (1998:107) argued against the claim that same-sex relations were a result of colonialism, pointing out that “(t)he colonialists did not introduce homosexuality to African but rather intolerance of it-and systems of surveillance and regulation for suppressing it – these systems were not successful as long as the reaction of the colonized was simply to hide or deny such practices; Only when native people began to forget that same-sex patterns were ever a part of their culture did homosexuality become truly stigmatized”. By saying that homosexual acts are un-African and results of colonialism, one is implying that the “African culture, essentialized and stripped of its diversity, is presented as homogenously heterosexual and inherently homophobic” (Ibrahim, 2015:267).

In addition, Kollman (2007) believed that the same laws and beliefs that underlie issues that affect lesbian persons may also be liable for promoting discrimination and violence against lesbian persons in the African States. He argued that religion and what he called ‘confessional heritage’ played a substantial part in the non-acceptance of homosexual people in African countries. However, this does not imply that religion is solely responsible for violence against lesbian persons, but it is clear that religion plays a great part in promoting violence against lesbian persons (Connell, 2014). There is a great need for religious leaders to assist in fighting and preventing violence that is targeting sexual minorities or persons who identify themselves as homosexuals (Ibrahim, 2015). It should be obligatory upon all religious leaders to condemn and prevent violence against sexual minorities even if they believe that homosexual persons are not Africans or not deserving to be called Africans (Douglas, 2018). Religious leaders should join Archbishop Desmond Tutu who advocated for the protection of LGBT people stating that: “I cannot but be as God has made me. And so, I spoke against the injustices of apartheid, about racism, where people were penalized for something about which they could do nothing, their ethnicity. I, therefore, could not keep quiet when people were hounded for something they did not choose, their sexual orientation” (Ibrahim, 2015:65).

### **3.8. The role of the UN and human rights mechanisms.**

The United Nations was founded in 1945 and “the original idea was to entrust the Commission with the following tasks: formulating an international bill of rights and recommendations for an international declaration or convention on civil liberties; discussing the status of women, freedom of information, the protection of minorities and prevention of discrimination; and considering any matter in human rights which would be likely to impair the general welfare or friendly relations among nations” (Alston, 1992:127). The United Nations Charter was not

primarily set up as a body to address human rights violation, however, it later turned into the main global forum for inspecting and condemning states' performance in the field of human rights, encouraging States to protect and promote human rights (Oberleintner; 2007:50).

The UN Charter covers a range of provided human rights and grants a fundamental departure from former approaches to the international protection of human rights (Sohn, 1977). In the Charter, members of the United Nations have indorsed their "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small", and their purpose "to promote social progress and better standards of life in larger freedom" (Sohn, 1977:130). According to the United Nations Charter assuring human rights to all persons, human rights should and can be protected through States cooperation, development programmes, and policy assistance, as it was stated in the Universal Declaration of Human Rights Instruments. Human rights principles that are listed in the Universal Declaration of Human Rights and the International Human Rights Law should guide states to meet their obligations and of rights -holders to claim their human rights (United Nations, 2012:8).

Article 1 of the Charter discusses the main declarations of the United Nations as follows; "to maintain international peace and security"; "to develop friendly relations among nations based on respect for the principle of equal rights"; "promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion" (Mertus, 2004:37). The rights of life, liberty, and security of persons, privacy and freedom from torture, cruel, inhuman degrading treatments are protected in the ICCPR that was adopted by the General Assembly under the United Nations in 1996, and they apply to all persons regardless of their sexual orientation (Steiner, Alston & Goodman, 2008). According to the United Nations Charter, every person is entitled to enjoy the right of privacy without subjective or unlawful interference, including interference by families, homes or correspondence as well protection from unlawful attacks, regardless of their sexual orientation or gender identity (Wilets, 1994). Respects for human rights is a foundation for international relations, and discrimination based on sexual orientation and or gender identity has been deemed unjust (Merry, 2009). In addition, the United Nations Charter recognized that the State has an obligation to protect citizens from punishment or discrimination based on sexual orientation or gender identity, to protect citizens from arbitrary arrest, and it rejected attempts and justification of laws that criminalize same-sex acts (Dworkin & Yi, 2003). The United Nations also reported that "criminalizing sexual acts on the grounds of sexual orientation

violates various provisions of international law beyond privacy, including the right to be free from arbitrary discrimination, and general human rights principles” (Brown, 2009:855).

Nevertheless, the majority of independent authorities and human rights activists have expressed their concerns to the United Nations regarding reports of discrimination against LGBT and ‘non-traditional sexual orientation and gender identities’, including denied access to justice protection from state abuse, discriminating laws, arbitrary arrest and equality before the law (International Commission of Jurist, 2016). Reports have included discrimination, hate crimes and killings of lesbian persons by communities aiming to “restrict and normalize female sexuality” and for the purpose of so-called social cleansing, and even lesbians killed in custody by police (Epprecht, 2013).

“A wide variety of United Nations actors have adopted the view that the freedom from being arrested on account of sexual orientation does not rest on privacy alone” (Brown, 2009:854). The United Nations Human Rights mechanisms have drawn attention to violence and extrajudicial execution committed by state and non-state actors against lesbian persons (O’Flaherty and Fisher, 2008). Gerber & Gory (2014:407) stated that United Nations “has begun to address LGBT issues but only sporadically, they argue that it has failed to address, in a systematic manner, the most flagrant violation of LGBT rights, namely, the continued criminalization of homosexuality”. The UN has received praise on rapid progress in some positive developments including more legislation on protecting LGBT human rights and declaring States to promote and protect LGBT human rights (International Lesbian, Gay, Bisexual, Trans and Intersex Association, 2017). United Nations officials, including the former Secretary-General and the High Commissioner for Human Rights, Ban Ki-Moon, have been quoted promoting LGBT rights. Ban Ki-Moon was quoted in 2012 expressing that “lesbian, gay, bisexual, and transgender people are entitled to the same rights as everyone else” (Persad, 2014:337). A variety of United Nations human rights mandate holders including human rights activists have also mentioned that the freedom from arbitrary arrest because of sexual orientation violates LGBT rights (Brown, 2009). Nevertheless, the ICCPR of the United Nations Charter declares that States are obligated to exercise “due diligence” in presenting and investigating cases that involve extrajudicial execution, including cases where the victims are targeted on grounds of their sexual orientation or gender identity (Farrior, 2009). “These obligations express clearly the obligations of all members and the powers of the organizations in the field of human rights; the provisions have the force of positive international law and create basic duties which all members must fulfil in good faith” (Sohn, 1977:131). Gerber &

Gory” (2014:405) pointed out “that while there has been improvement in its approach to the promotion and protection of LGBT rights, there is still much more that could be done by the United Nations Human Rights Committee.

### **3.9. Contextualizing global LGBT human rights**

Global human rights institutions are established to prevent human rights violations. “Global human rights institutions provide a space for discussion of a consensus and for establishing differences on the scope, content and implementation of human rights” (Oberleitner, 2007:35). They transcribe human rights standards, they also guide states to endorse human rights standards and hold states accountable if they fail to adhere (Flood, 1998). “When human rights violations occur, human rights institutions are obligated to step in and “remedy” human rights violations, compensate victims, and hold perpetrators accountable” (Oberleitner, 2007:38). For the past decades, global human rights institutions and human rights activist have been working side by side to protect and promote human rights globally and in accordance with the International Human Rights Law including rights related to gender identity and sexual orientation. Kollman & Waites (2009:5) said: “The increasingly sophisticated international organizing of LGBT human rights groups has begun to influence the agendas and policies of both certain international organizations and states across the globe”

Rights related to sexual orientation and gender identity became constant subjects in the global arena since the early 1990s (Kollman and Waites, 2009). The arrival of these rights was first initiated in 1995 in the language of international declarations such as the United Nations and the Platform for Action formed by the fourth World Women’s Conference in Beijing (Patchesky, 2000). Hence, lots of effort and studies on sexuality and sexual rights first originated from health literature, mainly from “feminist work on women’s reproductive and sexual health” (Gruskin, Miller & Vance. 2004:81). The drafting and signing of Declaration of Montreal- 2006 and the Yogyakarta Principles on the application of sexual orientation and gender identity by global LGBT activist in 2006 symbolized that LGBT subjects are finally finding a place in international human rights law and policy makers (Kollman & Waites, 2009). However, Kollman & Waites pointed out that “...despite the rapid development within international LGBT rights, very few empirically orientated politics scholars have written about either transnational LGBT movements or the partial incorporation of sexual orientation and gender identity into the existing international human rights regime” (2009:8).



There has also been a strong focus directed at pursuing inclusion of 'sexual orientation' in human rights dialogs which has been initiated by LGBT International Organizations and legal specialists since the 1990s (Heinze, 1995). The following part of this chapter seeks to discuss functions of the global human rights institutions and it will also address recent global developments related particularly to LGBT human rights advocacy. This part of the chapter will offer a brief historical overview of the LGBT human rights in human rights discourses, moving focus on how issues related to LGBT and sexual orientation and gender identity have been dealt with in international human rights law and the United Nations. This discussion involves existing work on LGBT Human Rights, including sexual rights, and basic human rights from various authors.

### **3.10. Human Rights, Sexual Rights and LGBT Rights**

After the cold war era the debate of human rights gained visibility in the international politics, and it accentuated the idea of human dignity and the importance of human dignity (Orend, 2002). The concept of human rights was then formulated in the United Nations Development Report of 1994 and addressing threats to human survival became more prominent to the international community rather than individual states (Lockwood, 2006). Steiner, Alston & Goodman (2008) argued that there is absence of concurrence on what human rights are since every individual holds different ideas of human rights. Mertus & Bourantonis (2010:4) observed that "rights do not begin at the international level, they begin with local problems and local lives, with individuals who realize their dignity has been injured and strive to imagine remedies and solutions". The most widely recognized and commonly known meaning of human rights is that human rights are those rights one has essentially by being a human being. Different scholars have defined Human Rights as protection from interminable dangers, hunger, disease and oppression as well as protection from unexpected and harmful disruptions in the patterns of daily life (Dembour, 2010).

Human rights are legitimate rules deployed by sovereignty states and moralizing dialogues produced by persons. They have become inclusive and universal in the sense that most states have fundamentally embraced them and citizens in many nations as well organizations such as Human Rights Watch advocate for them (Brown, 2009). According to the OHCHR, Human rights involve relations amongst persons, and between citizens and the State (in Donnelly, 2007). Dignity arises from the ability of human beings to engage themselves in meaningful relationships with other persons and with the State. Therefore, the right to dignity holds all

important human rights (Donnelly, 1982). Thus, the practical task of protecting and promoting human rights is primarily a national one for which each state must be responsible (Mertus, 2004:29). Human rights include “the ability to demand and enjoy a minimally restricted yet optimal quality of life with liberty, equal justice before law, and an opportunity to fulfil basic cultural, economic, and social needs” (Haas, 2008:3). Arendt’s (1989) view on human rights is built on a political understanding of what it means to be human, the distinctiveness of being human is addressing the question of “who and what am I?”, and through action establishing and appearing in the political space (polis). He supported his statement by saying that human dignity is an essential part of human rights and it enables human beings to have a sense of self-worth and self-awareness, to be able to exercise self-determination, to develop one’s personality and to strive for self-fulfilment.

Haas (2008) defined rights by differentiating between moral rights and legal rights. He stated that ‘moral rights’ can be viewed as ethical justifications for setting up, maintaining, and respecting protections of individuals, whereas ‘legal rights’ can be defined as a type of institutional arrangement in which interests are guaranteed legal protection, choices are guaranteed legal effect, or goods and opportunities are provided to individuals on a guaranteed basis (Haas, 2008:3). Vasak (1982) classified human rights in three generations which were liberty, which focuses on issues of civil and political rights, equality, which is concerned with issues of social, economic and cultural rights. And, lastly, fraternity, which is concerned with peace and rights to development (Vasak, 1982:69). Ngubane (2013) noted that one of the most important rights is personal security and it is relevant in light of the protection of human rights. Personal security involves the protection of people from violence perpetrated by the state itself or outside states. O’Brien (2007) expressed that human security centres largely on the requirement for rights for all persons despite contrasts.

According to the United Nations, Human Rights are rights essential to every human being, regardless of race, religion, ethnicity, nationality, sex, language or any other status. Additionally, human rights include the right to life and liberty, the right to education and work, freedom of expression and opinion, freedom from slavery and torture, and everyone is entitled to these rights and many more, without segregation (Donnelly & Whelan, 2017). Granger (1992) explained that “Human rights are not privilege granted by the few, they are a liberty entitled to all, and human rights include the rights of all humans, those in the dawn of life, the dusk of life or the shadows of life” (in Willis, 1992:284). Human rights are nevertheless one way that has been conceived to acknowledge and to ensure human dignity (Donnelly, 2014).

Donnelly argued further that even though the idea of human rights was first verbalized in the West in modern times, it would appear to be an approach particularly suited to contemporary social, political, and monetary conditions, and in this way of far reaching contemporary importance both in the West and the Third World (2014). The late former Secretary-General Kofi Annan observed that: “Since respect for human rights is central to the legitimacy of the State order, human rights should be nurtured locally by branches of government, national human rights institutions and civil society” (Mertus, 2004:4).

Likewise, Lesbian human rights have been a most debatable subject in the international community for decades now. There have been debates influenced by different opinions with regards to lesbian human rights and the increasing violence against human rights violations because of sexual orientation or gender identity (Kollman, 2007). The concept of sexual orientation and gender identity “...has been subject to less critical scrutiny in relation to human rights” (Waites, 2009:143). Recently, the issue of lesbian human rights has been an increasing academic dispute and has become a crucial focus of discussion for lesbian activists and feminists (Heinze, 1995). Human rights of sexual minorities including lesbian persons are a highly contested issue within intergovernmental institutions and states (Swiebel, 2009; Bernstein & Verta, 2013). Lesbian human rights have been undermined by deep-rooted hate and stimulation of violence based on their sexual orientation (Mkhize, Bennett, Reddy & Moletsane, 2010). In many parts of the world Lesbian persons face severe human rights violations because of their perceived or actual sexual orientation or gender identity (Gerber & Gory, 2014). They are exposed to extensive violence and legally sanctioned discrimination daily, facing severe human rights abuses due to their sexual orientation (Gerber & Gory, 2014). Many countries have not shown any acceptance of lesbian rights and they have objected to them as human rights and have opposed legalization of LGBT rights because they offend a state’s culture, religion and natural ways (Voss, 2017). The Inter-American Human Rights System has dealt with different cases by states involving violence against human rights based on sexual orientation (Rudman, 2015).

Bernstein (1997:54) stated that several forms of expressions of hate against lesbians, “...including by politicians, the media, religious leaders and others, have been addressed by UN human rights law recognizes that the right to freedom of expression can be restricted where it presents a serious danger for others and for their enjoyment of human rights”. However, Meyers (2018:154) noted that most western States have been working towards endorsing, promoting and respecting sexual orientation and gender identity as part of human rights.

Meyers stated that the U.S has stressed the continuity of publicly implementing human rights and providing protection abroad and at home, noting that it may be able to fight against discrimination based on sexual orientation and gender identity, to assist those who are “highly vulnerable” to these acts of hate.

The exclusion of Lesbian persons from previous origins of human rights in the International Human Rights Law indicates the actual emergence of granting lesbian persons the same human rights that are granted to heterosexual persons, regardless of their sexual orientation or gender identity (Butler, 2004). Bamforth (2005:226) commented on the nature of rights granted to the Lesbian persons, stating that “...it is artificial to explain rights claims in terms of a person’s lesbian or gay sexual orientation”. Lesbian human rights “requires critical examination of both the consolidation of the culturally specific identity categories of Lesbian and conjoining of LGBT with human rights” (Kollman & Waites, 2009:2). The latter endorses a redefinition of human rights in a setting of the past absence of sexuality and gender nonconformity from human rights resolutions and discourses (Petchesky, 2000).

In the attempts to address violence based on one’s sexual orientation and gender identity, a sexual rights framework has been introduced by the International Human rights law under the United Nations. Prior to 1993, the concept of “sexual rights” was nowhere to be found in international documents, it took nearly half a century for sexual rights to enter the debate on human rights at the United Nations (Voss, 2017). The exceptions of provisions restricting discrimination on the account of biological sex, affairs of sexuality and sex practices were completely overlooked (Mertus, 2007). McGill (2014) noted that, over the last two decades, the sexual rights of women and to a lesser extend the lesbian community, have increasingly been considered at the United Nations. Herdt (2009:20) pointed out that: “Sexual rights have now come to mean the right of access to the highest standard of sexual health care”. The International Gay and Lesbian Human Rights Commission has also noted that a sexual rights framework is crucial because it “...allows for greater cross-movement organizing, gives deference to local activists’ preferred ways of thinking of and expressing any gender which falls outside of social and cultural norms, and encourages modes of organizing that do not reify gender and sexual binaries” (Lind, 2010:17). De la Dehesa (2010:4) agreed with Lind that: “An evolving framework has constructed sexual rights as an extension of freedom of association and freedom of expression”.

Furthermore, Petchesky has described 'sexual rights' as the 'newest kid on the block' in international discussions about human rights (2000). Human rights that are related to sexual orientation have been opposed by different states with reference to a heteronormative understanding of religious beliefs, state identity and cultural norms (Waites, 2009). Sexual rights have been considered as inferior to the important matters such as matters of housing, employment and education (Richardson, 2000). The 1995 UN World Conference on Women in Beijing (1995) has been noted for progressing the concept of sexual rights. The Platform explicitly declared that "the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence" (UN World Conference on Women in Beijing, 1995:33). Sexual rights allow persons to demand accountability from the authority holders concerning the personal dimensions of their lives (Patchesky, 2000). Sexual rights increase the inclusion, representation and the degree of independent engagement persons have with the decisions that affect their lives (Armas, 2010). Sexual rights "...not only empower people regarding their own decisions about their sexual lives, but also generate self-esteem, a new perception of citizenship, control over their own lives in other spaces like, health, education, employment, etc." (Armas, 2010:09). The Swedish Government defined sexual rights as meaning that all people, irrespective of sex, age, ethnicity, disability, gender identity or sexual orientation, have a right to their own body and sexuality (Sen & Ostlin, 2008). Sexual rights hold human rights that are already existing and recognized in national laws, international human rights documents and other human rights consensus declarations (World Health Organization, 2006).

The World Health Organization (2006) argued that sexual rights violations are not just a matter of concern to sexual minorities only, but they are also an issue that affects every person. They do not only affect sexual minorities, they also have an economic impact, and they also have an impact on families, friends and social wellbeing (Sen & Ostlin, 2008). It is therefore important for the all state actors to develop notional and political working relations with other local, national and international actors to assist in applying and protecting sexual rights (Richardson, 2000). This would develop and produce more instruments that will monitor sexual rights violations and incorporate sexual rights in the existing human rights instruments (Petchesky, 2005). Inclusion and recognition of all human rights including rights of excluded persons can only be completed by considering sexual rights as an essential element that affects many other areas of development work (Armas, 2007). Sexual rights policies need to be established in

accordance with the visions of those who are most excluded because of their sexuality and those who suffer violations of their sexual rights (Armas, 2010).

Nevertheless, lesbian human rights movements have become crucial in the LGBT community since they assist with fighting for LGBT rights including decriminalization of homosexuality. Different scholars have noted that the issue of granting LGBT human rights and decriminalizing homosexuality is still an issue in most countries, specifically African States. Different scholars focusing on international LGBT human rights activism have argued that by developing international LGBT movements, activists improve increasingly professionalized organizations that are largely based on LGBT human rights (Warner, 2002; Kollman & Waites, 2009). Mertus (2007) argued that, in spite all the visible movements regarding criminalization of homosexuality and recognition of LGBT rights in the global arena, the LGBT community has still been subjected to harassment, discrimination, and violence. McGravity & Dinero, (2012) also argued that, although the statistics are grim, LGBT human rights around the world are progressively improving, affected by and consequently affecting societies politically and culturally. The decriminalization of homosexual activity began in countries such as France, Belgium and The Netherlands in the early 1950s. Currently, the European Union is at the forefront of LGBT human rights legislation, discrimination on account of sexual orientation or gender identity is banned, and it has started granting openly LGBT persons opportunities such government positions (Paternotte & Kollman, 2013). The European Union has banned discrimination based on sexual orientation, and in many cases, people have elected openly gay politicians into office. Sexual orientation and gender identity subjects are finally finding a place on international human rights, law and policy agendas in global forums (Kollman & Waites, 2009).

### **3.11. The UN procedures and addressing human rights violations based on sexual orientation and gender identity.**

Violence against lesbian persons continues despite the changes that have been announced by the United Nations regarding protecting and promoting minority rights (Voss, 2017:2). Prejudice accompanied by hate towards lesbian persons including discriminating laws against lesbian persons remains a significant international problem (United Nations Human Rights Council, 2015). Extensive violence and discrimination against lesbian persons which violates human rights has drawn attention to the United Nations special procedures. Human rights violations and issues relating to sexual orientation and gender identity have been increasingly

raised by the treaty bodies through reports, research, policy briefs, and awareness raising materials, press releases and joint statements (United Nations Human Rights Council, 2015:73-76). A joint statement on sexual orientation and gender identity that was delivered by UN treaties at the United Nations General Assembly (UNGA) and human rights council between 2005 and 2011 serves as evidence of the increasing support among States to address issues which are affecting the Lesbian community (Braun, 2013). In June 2011 the first United Nation resolution on ‘human rights, sexual orientation and gender identity’ which was led by South Africa, was adopted by the Human Rights Council, a follow up resolution was then adopted in September 2014 (Hughes, 2014). The adoption and implementation of this resolution reflects the effort of the United Nations’ commitment to fight against discrimination based on sexual orientation and gender identity.

The United Nations consists of independent human rights bodies which are obligated to provide advice on human rights and report to the United Nations body from a country specific perspective (Alston, 1996). These bodies include United Nations Development Programme (UNDP), Office of the High Commissioner for Human Rights (OHCHR) and United Nations Human Rights Council (UNHRC), who work independently from states and they monitor implementation of human rights through States (Lookwood, 2006). Under the United Nations every state has an obligation to ensure that every person enjoy rights provided to them by the treaty and a duty to protect citizens from human rights violations. The United Nations provides equality and non-discrimination principles which are provided in all the main human rights treaties.

The United Nations has recommended that states should take all the necessary measures prevent and combat human rights violations and discrimination against all persons regardless of their sexual orientation or gender identity; to also ensure enjoyment of rights on an equal basis with others (Kimmel, 2004: 74). “United Nations treaty bodies have not yet stated that international human rights covenants prohibit all forms of arbitrary discriminations; however, they have found sexual orientation discrimination to be prohibited on several occasions” (Brown, 2010: 851).

### **3.12. International Human Rights Law and human rights**

The International Human Rights Law is the body of international law that is anticipated to promote, support and protect human rights at the domestic and international level (Merry, 2009). It was drafted in December 1948 as ‘a common standard of achievement for all people

and nations’, the Declaration outlines that all human beings are eligible to social, cultural, civil political and economic rights (Steiner, Alston & Goodman, 2009). “International human rights law requires States to ensure non-discrimination and equality (de jure and de facto) on the basis of gender, sexual orientation and gender identity” (Report of the United Nations Special Rapporteur, 2009). It is predominantly made up of treaty law-legally obligatory arrangements among state parties and customary International Law – rules of law derived from the constant exercise of States (Arend, 1999). The International Human Rights Law was implemented by the General Assembly as the base of the Charter of the United Nations and the Universal Declaration of Human Rights (Simmons, 2009). The international law mandates advocate for the protection of Lesbian, Gay, Bisexual and Transgender persons from violence and discrimination and is the second major frame that is used by the United Nations Human Right Council to promote human rights protection (Voss, 2017). Violence and discrimination of lesbian persons due to sexual orientation and gender identity has been one the recent subjects among many in the International Human Rights Law agenda (Brown, 2010). Different scholars have advocated for the utilization of the International Law in promoting lesbian human rights and encouraging African states and organizations in promoting human rights (Ibrahim, 2015). The International Law should be used to fight against human rights violations and challenge criminalizing laws in Africa and around the world (Simmons, 2009).

The implementation of the International Human Rights Law can take place both at domestic level and international level (Simmons, 2009). Mechanisms, such as declarations, guidelines and principles adopted at the international level contribute to the development, implementation and understanding of the international human rights law, while international treaties and customary law form support of the international human rights law (Byers, 1999). Trained parties may be able to resort to international mechanisms for assistance when domestic law fails to provide a solution for human rights violations (Kratochwil, 1991). Stahn (2007) argued that by approving human rights treaties, states commit themselves to respecting, protecting and fulfilling their duties of ensuring that their domestic law is compatible with international standards.

The International Human Rights Law sets out the basic protections that all individuals are entitled to, these protections always sought to be applied including during emergency and conflict situations (Steiner, Alston & Goodman, 2008). According to the International Human Rights Law, States have legal obligations to protect human rights of every human being, regardless of their sexual orientation or gender identity, in line with the Universal Declaration



of Human Rights principles (O’Flaherty & Fisher, 2008). All persons, are entitled to enjoy protection provided by International Human Rights Law, including respect, right to life, security of person and privacy and right to be free from discrimination and the right to freedom of expression irrespective of sex, sexual orientation or gender identity (United Nations Human Rights, 2012)

The fundamental principle of the International Human Rights Law states that “everyone is entitled to all human rights and fundamental freedoms and this entitlement is inherent to all by the fact of birth” (International Lesbian Gay Association, 2016:44). “It declares that everyone has the right to freedom of expression; however, the exercise of the right to freedom of expression should not violate the rights and freedoms of other people, including the right to equality and non-discrimination (United Nations, 2012:333). The International Human Rights Law prohibits “arbitrary discrimination in all of its guises’ – a prohibition which necessarily extends, by definition, to sexual orientation and gender identity” (Brown, 2010). It also mentions that it is the duty of States to ensure that these rights and protections are respected and fulfilled. The law sets out that for States to be able to promote and protect Human Rights the governments has an obligation to act in certain courses or to cease from specific acts that may harm or impose danger on Human Rights and fundamental freedoms of individuals or groups (McCorquodale & Simons, 2007).

Under the International Human Rights Law, the United Nations has provided a broad scope of universally acknowledged rights, including civil, social, cultural, economic and political rights (Donnelly, 2013). It has additionally settled components to protect and assist states in completing their responsibilities (United Nations Human Rights, 2012). Under the International Human Rights Law states are obliged to respect and follow acts laid down by the international human rights law, Steiner, Alston & Goodman (2008) argued that under the International Human Rights Law States accepts responsibilities and obligations to respect, protect and to fulfil human rights by becoming a member of the international treaties. States’ responsibility to respect under the international law means refraining from interfering with or restricting the enjoyment of human rights; the state is also responsible or obligated to protect its citizens against any human rights violations (Donnelly, 2013). States are “obliged under International Human Rights Law to prohibit, investigate, punish and provide redress for torture and other cruel, inhuman or degrading treatment” (Steiner, Alston & Goodman, 2008:83).

As per the human rights declaration, every person has the right to seek and enjoy asylum in other states without fear from discrimination or torture on grounds of sexual orientation and gender identity (O’Flaherty & Fisher, 2008). “A state may not remove, expel or extradite a person to any state where that person would face a threat to their life or freedom, including violence, arrest discrimination, persecution, torture, or any other form of cruel, inhuman or degrading treatment or punishment on basis of sexual orientation or gender identity” (United Nations Human Rights, 2012:40). Every person should be free to voice their opinions and free to express themselves regardless of their sexual orientation or gender identity. “This includes the expression of identity or personhood through speech, department, dress, bodily, characteristics, choices of name, or any other norms, as well as the freedom to seek, receive and impact information and ideas of all kinds, including with regard to human rights sexual orientation” (O’Flaherty & Fisher, 2008:231).

According to the International Human Rights Law, “Discrimination includes any distinction, exclusion, restriction or preference based on sexual orientation, gender identity which has the purpose or effort of nullifying or impairing equality before the law or the equal protection of the law, or the recognition, enjoyment or exercise, on equal basis, of all human rights and fundamental freedoms” (Merry, 2009:37). Therefore, it declares that “Everyone is entitled to equality before the law and the equal protection of the law without any such discrimination whether or not the enjoyment of another human right is also affected” (Simmons, 2009:61). The International Human Rights Law prohibits discrimination on other grounds including gender, race, age, religion, disability, health and economic status (Hendricks, 2007). “International Human Rights Law establish legal obligations on States to ensure that every person without distinction of any kind can enjoy these rights, failure to hold the human rights of all people and protect them against violence and discrimination constitutes serious violations of international human rights law and have far-reaching impact on society” (International Lesbian Gay Bisexual, Trans and Intersex Association, 2016:44). To ensure that all humans have a right to lively freely and free from discrimination and violence. As per Ibrahim (2015:281), “The most important role of the International Law should be the prevention of the promulgation of laws that impose greater penalties on LGBT acts and identities at the domestic level”.

In addition, the International Human Rights Law declares that the state has a duty to ensure that every person enjoy human rights without any distinction (Voss, 2017). Failure to provide and protect human rights of all persons, and failure to protect persons against any act of

discrimination constitutes serious human rights violation as per the international human rights law and can impose far-reaching impact on society (International Lesbian Gay Bisexual, Trans and Intersex Association, 2016: 44). Conclusively, Ibrahim (2015:281) suggested that "...if enough African States move towards decriminalization of the domestic level International Law may be considered as a part of departure for litigation at the constitutional and regional levels".

### **3.13. The United Nations General Assembly**

The United Nations General Assembly is one of six principal organs of the United Nations and it is the centrally considered policymaking and representative structure of the United Nations (Peterson, 2006). The General Assembly is responsible for establishing lessons and producing recommendations which assist "in the realization of human rights and fundamental freedoms for all without distinctions as to race, language, or religion" (Sohn, 1977:131). Article 62 (2) states that the General Assembly has a duty "to make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all" (Sanders, 2008:67).

According to the General Assembly, every individual is entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social and cultural (Howard and Donnelly, 1986). The entitlement of these human rights includes the right to life, the right to be free from all forms of discrimination and the right not be subjected to torture, or other cruel, inhuman or degrading treatment or punishment (Donnelly, 2013). Article 28 of the General Assembly calls on every person to respect and consider other persons without discrimination and to uphold relations that are intended at promoting, safeguard and supporting communal respect and tolerance (Brown, 2012). The United Nations General Assembly has called States "to ensure the protection of the right to life of all persons under their jurisdiction, and investigate promptly and thoroughly all killings, including those motivated by the victims of sexual orientation" (United Nations Human Rights, 2012:15). "As men and women of conscience, we reject discrimination in general, and in particular discrimination based on sexual orientation and gender identity. When individuals are attacked, abused or imprisoned because of their sexual orientation, we must speak out. Where there is tension between cultural attitudes and universal human rights, rights must carry the day" (Former United Nations Secretary Ban Ki-moon, 10 December 2010). Failure of a State to exercise due diligence in this concern breaches its obligation under the International Human Rights Law (Donnelly, 2013).

In the United States of America, the General Assembly has been recognized as an important central institution to the promotion of lesbian persons through its resolution of human rights, sexual orientation and gender identity (Waites, 2009). On the resolution the Assembly expressed concerns about acts of abuse and human rights violations committed against the lesbian persons because of their sexual orientation and gender identity (Johnson, 2013). The resolutions declared that violence and human rights violations against any human being should be condemned; states should investigate violence against lesbian persons and protect lesbian persons and defenders of human rights of lesbian persons (Mertus, 2007). “Everyone has the right to freedom of peaceful assembly and association, including for the purpose of peaceful demonstrations, regardless of sexual orientation everyone is entitled to enjoy all human rights without discrimination, including discrimination on the basis of sexual orientation, gender identity” (O’Flaherty & Fisher, 2008: p.219). The general assembly noted that human security can be used as an approach to support Member States addressing human rights violations and protecting human dignity of citizens. The following paragraph provides a clear outline of the human security approach with regards to the protection of human rights against discriminating laws.

### **3.14. Human security approach.**

The resolution by the General Assembly in 2012, outlines Human Security as human centred, inclusive, and prevention positioned (Cook, 2012). It emphasizes the role of “...member States in identifying and addressing widespread and cross-cutting challenges to survival, livelihood and dignity of their people” (Gomez and Gasper, 2013:109). Human security is centred around individual and community protection, it involves priority freedoms such as; freedom to be treated with dignity, freedom from want and freedom from fear (King & Murray, 2001). The main focus of the human security approach is protecting individual persons and its goal is to protect persons from non-traditional and traditional threats, such as military interventions, disease and poverty (Jolly & Rey, 2007). The essential idea to the human security approach is that persons have “...the right to live in freedom and dignity, free from poverty and despair.... with an equal opportunity to enjoy all their rights and fully develop their human potential” (King and Murray, 2001; p. 585). The human security approach deliberates different providers of security; however, citizens are also responsible in providing security for themselves and for fellow citizens.

Human Security is about assuring important freedoms to persons by the state, so that they can enjoy and exercise their choices free and safely, as well as protecting opportunities provided to them (Human Development Rights, 1994). Human security does not only evolve around individual or community security from violence, it can also be utilized to assess security from the state as well and the approach extends from analysing the security of persons from territorial security policy (Gomez and Gasper, 2013). The state is responsible for providing security to its persons or citizens. However; state security can be harmful to human welfare (Gregoratti, 2013).

According to Paris the Human Security approach includes five principles:

- It is people-centred, focusing on the safety and protection of individuals, communities, and their global environment. The approach empowers local people to assess vulnerabilities and threats and then identify and take part in strategies to build security rather than imposing outside definitions;
- It is comprehensive. In practice, human security strategies range from a limited operational ‘freedom from fear’ to a more encompassing structural approach including freedom from want’ and ‘freedom to live in dignity’;
- It is multi-sectorial, addressing a range of interdependent global and local threats, insecurities and vulnerability in security, development and human rights;
- It is context-specific, local dimensions of global threats are unique and require context-specific assessment and planning; and
- It is prevention-oriented, conflict prevention and peacebuilding strategies aim for sustainable solutions to address immediate and structural factors causing fear, want and humiliation (Paris, 2001:87-102).

### **3.15. The High Commissioner for Human Rights (OHCHR)**

The OHCHR was established in 1993 by the United Nations General Assembly and serves as the coordinating and umbrella for all of the United Nations human rights mechanism (Mertus, 2004:13). The Commission is required to “undertake two enormous tasks: mainstream human rights into the work of all UN activities and agencies and developing and implementing a plan to strengthen human rights-related United Nations actions at the country level” (Mertus, 2004: 8). The mandate of the Commissioner includes the following: to promote and protect the actual

satisfaction of basic rights including civil, economic, cultural and social rights; to prevent human rights violations throughout the world; to engage governments and enhance international cooperation in securing and promoting respect for human rights; and to protect human rights activities throughout the United Nations system (Mertus, 2004:13). The OHCHR is charged with giving priority to “the most pressing human rights violations, both chronic and acute, focusing on “at risk” and “vulnerable” populations; and paying “equal attention to the realization of all rights, including the right to development” (Piccone, 2011:206). It is “entrusted with a mandate to promote human rights institutions and to undertake awareness-raising and educational activities” (Oberleitner, 2007:39).

The High Commissioner for Human Rights Zeid Ra’ad Al Hussein and his predecessor Navi Pillay, as well as UN former Secretary-General Ban Ki-Moon expressed his concerns about violations of LGBT human rights. Ban Ki-Moon reported in the news that “It is our duty the United Nations Charter and the Universal Declaration of Human Rights to protect the rights of everyone, everywhere.” (United Nations former Secretary-General Ban Ki-moon to the Human Rights Council, 7 March 2012). In December 2010, the UN former Secretary-General Ban Ki-Moon delivered a first speech on the mission of LGBT equality, calling for the international decriminalization of homosexuality and seeking for actions to challenge discrimination and violence against LGBT persons (Van Klinken, 2017). In his speech he was quoted stating that “As men and women of conscience, we reject discrimination in general, and in particular discrimination based on sexual orientation and gender identity. Where there is tension between cultural attitudes and universal human rights, rights must carry the day” (United Nations, 2010:85). In June 2011, the Council adopted the first United Nations resolution 17/19 on human rights, sexual orientation and gender identity which received support from Council members from all regions (United Nations Human Rights, 2012).

In November 2017, the OHCHR published the first report on sexual orientation and gender identity and submitted it to the General Assembly on behalf of the United Nations (Jordaan, 2017). The report stated that violence, killings, torture and other forms of inhumane, cruel and degrading treatment is condemned and should not be tolerated (Donnelly & Whelan, 2017). The majority of the report however goes beyond issues concerning violence and instead focuses on issues of discrimination (Coleman, 2013:133). The report stated that sexual orientation and gender identity discrimination exists in every aspect of society, including from families, community, employment, health care, education freedom of speech and assembly (Jordaan, 2017).

### **3.16. The Universal Declaration of Human Rights (UDHR).**

The UDHR was adopted by the General Assembly in 1948, the Charter provides a list of human rights and fundamental freedoms (Sohn, 1977). The Declaration states that “all human beings are born free and equal in dignity and rights” (Universal Declaration of Human Rights, Article 1). The UDHR serves under the charter of the United Nations and the core International Human Rights treaties (Simmons, 2009). The 1948 Universal Declaration of Human Rights enshrined in its preamble the “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family” as the “foundation of freedom, justice and peace in the world” (United Nations Human Rights, 2012:39). The Declaration “...states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of human family and constitutes an obligation for all members of the international community” (Sohn, 1977:129). This human rights mechanism of the United Nations has gradually brought attention to human rights violations based on sexual orientation and “...gender identity, including killings, sexual violence, torture, attacks on human rights defenders denial of free expression and assembly, arbitrary detention, discriminatory laws, and discrimination in access to education, health care, housing, education” (Donnelly, 2013:121).

The Universal Declaration of Human Right (UDHR) outlines a “...foundation for subsequent human rights treaties and has served as a critical tool for the protection of the human rights of Lesbian persons” (Kollman & Waites, 2009:17). “Today the Declaration not only constitutes an authoritative interpretation of the Charter obligations but also a binding instrument in its own right, representing the consensus of the international community on the human rights which each of its members must respect, promote and observe” (Sohn, 1977:131). Equality and non-discrimination are fundamental human rights values embodied in the universal declaration (Donnelly & Howard, 1987). Article 3 says that everyone has the right to life, liberty and the security of person (United Nations Human Rights, 2012). Article 12 of the Declaration states that “No one shall be subjected to arbitrary interference with privacy, family, home or correspondence, nor to attacks upon his honor and reputation” (Waites, 2009:140). The Universal Declaration of Human Rights is a major focal point for States wishing to structure sexual orientation and gender identity rights as universal (Voss, 2017).

### **3.17. United Nations Human Rights Committee (UNHRC).**

The UNHRC is one of the most prominent global human rights bodies in the world (Barnett & Finnemore, 1999). “Its work impacts upon multiple aspects of the United Nations system and

increasingly its jurisprudence is relied upon by other regional human rights instrumentalities and by national courts” (Gerber & Gory, 2014:305). “It is part of the committee mandate to promote and respect human rights over any particular consideration, even cultural practices or national legislation” (Voss, 2017:11). The UNHRC is responsible for monitoring states’ parties’ execution of the International Covenant on Civil and Political Rights (ICCPR). It was also “...established to address human rights violations in any part of the world, by any actor” (Voss, 2017:68). The UNHRC and the United Nations Commissioner on Human Rights (UNCHR) seeks to protect minority rights and prevention of discrimination on grounds of sex. The United Nations Commissioner on Human Rights was established in 1946, with the initial task of preparing the following statements: a universal bill of rights; international declarations or conventions on civil liberties, the status of women, freedom of information and similar matters; arrangements for the protection of minorities; and arrangements for the prevention of discrimination on grounds of race, sex, language and religion (Haas, 2008:80).

The council has increasingly become of importance and a “highly contested normative space”, and its effects has ultimately impacted lives of almost every person in every state within the UN system (Voss, 2017). In 2013 the commission implemented an educational programme called “free and equal”. The purpose of the programme was to “raise awareness of homophobic and transphobic violence and discrimination, and to promote greater respect for the rights of LGBT people everywhere” (United Nations 2017 in Voss, 2017:8).

The ICCPR Article 2 (1) of the mandate provides that each state party “...undertakes to respect and 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, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (Dennis, 2005:119). Article 26 provides that “...all persons are equal before the law and are entitled without any discrimination to the equal protection of the law, 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” (Steiner, Alston & Goodman, 2008:189). Although the Articles do not specifically mention discriminations on the grounds of sexual orientation, it is now well established that they encompass discrimination on the grounds of sexual orientation (Gerber & Gory, 2014:405). Conclusively, the UNHRC points out that reports of violence against lesbian persons demonstrate that human rights institutions



are faced with a big task in promoting and protecting lesbian person's human rights and prevent discrimination on grounds of sexual orientation and gender identity (Gerber & Gory, 2014).

### **3.18. Inter-American Commission on Human Rights (IACHR).**

The Inter-American Commission on Human Rights (IACHR) is a major and independent structure of the Organization of American States. The IACHR mission is to promote and protect human rights in the American hemisphere, and it is made up of seven autonomous members who function in a personal capacity (Westra, Bosselmann & Westra, 2012). The IACHR has been essential in the practice of protection and recognition of the lesbian rights in Americas (Alston & Goodman, 2013). Reports by this organ have shown that the lesbian persons are part of the minority groups that have been historically and systematically exposed to abuse and violence (Donnelly & Whelan, 2017). In 2010 the IACHR extended its resolutions to include "ways to combat discrimination of persons because of their sexual orientation and gender identity" (Meyer, 2015:23). In November 2011, the IACHR took an important step in reinforcement the protection of the LGBT people by declaring the establishment of the element for the rights of lesbian people (Thoreson, 2014). The commission stated that exemption for violence is a serious matter everywhere around the world and the analysis of conditions of impunity in cases of violence against lesbian persons is further complicated by lack of legal statistics (Alston & Goodman, 2013). The commission identified deviancies in the investigations and prosecution regarding cases concerning sexual minority groups, such as prejudice in the conduct of investigation (Thoreson, 2014). Crimes motivated by hate towards lesbian persons and the matter of approach that is often utilized leads to violence against lesbian persons not being classified as frequently as they should be as hate crimes or crimes that are motivated by prejudice (Herek, Gillis & Cogan, 1999). The mission was to promote, support and protect human rights in the region.

In November 2015, the IACHR approved the first thematic report which focused on violence against lesbian persons and exclusively on the LGBT person's human rights in the America (Donnelly & Whelan, 2017). The report entailed acts of violence, killings, and many other forms of violence perpetrated against lesbian persons, it also included a sequence of recommendations to OAS member states in order to prevent, investigate, punish and methods of redressing acts of violence against LGBT persons (Thoreson, 2014). To examine violence committed against lesbian people, the IACHR in its 2015 report on violence against lesbian people it combined the idea of violence based on prejudice, which had been developed by

academia (Meyer, 2015). In the report the IACHR indicated that violence based on prejudice “...is a concept that signals an understanding of violence as a social phenomenon, as opposed to violence being understood as taking place in isolation” (United Nations Human Rights, 2012:18). The report also showed that violence against lesbian persons creates violence based on prejudice towards individuals whose bodies and behaviour differ from the standards of other female bodies. Also, reportedly, lesbian women are more “...vulnerable to certain types of violence linked to misogyny, such as sexual and domestic violence, and attacks coming from persons close to them or family members (Donnelly & Whelan, 2017:21).

The Inter-American Commission on Human Rights (IACHR) has observed the states’ responsibilities “...to prevent, investigate, punish, and provide cooperation for violence motivated by the sexual orientation, gender identity, or bodily diversity of the victim” (Ending Violence, 2015:59). The IACHR has engaged in movements such as the issuing of declarations about the human rights condition of lesbian persons, condemning human rights violations and acts of violence against this population, it has granted safety procedures in favour of persons at grave risk, and has created a new foundation that is devoted to the rights of sexual minorities (Thoreson, 2014).

### **3.19. European Union.**

The European Union is established on the values of democracy, liberty, respect for human rights and fundamental freedoms, and the rule of law (Manners, 2008:160). Successive actions by the European Council obliges all European Union States to ban discrimination because of ‘sexual orientation’ in public and private sector (Wintemute, 2003:190). The European Union has had different cases concerning the LGBT persons’ rights and protection. “At the EU, the fight against sexual orientation discrimination has been given a place in the treaties, and in specific legislation and policies, and is ‘mainstreamed’ throughout various EU policy areas” (Swiebel, 2009:19). “The European Convention on human rights and fundamental freedoms (European Court) has made a very important contributors to the understanding of the protection of Rights related to sexual orientation under the European Convention” (Rudman, 2015:10). Rudman (2015) stated further that in Europe the court has been able to apply the right to privacy, to fighting against anti sodomy laws and this shows how the European system has progressed well past the negative attitude to sexual orientation and gender identity based on the right to privacy.

In Europe the Yogyakarta Principles and Montreal have become influential. Sexual orientation and gender identity have “...now been incorporated into the European Union treaties’ non-discrimination clauses and where the ECtHR has now firmly entrenched a right to same-sex sexual activity for adults by applying the right to privacy” (Kollman & Waites, 2009:5). The International Lesbian and Gay Association which was established in 1978 gained access to the European Union and achieved getting subjects involving LGBT rights onto the EU agenda (Swiebel, 2009). Through the European Union the LGBT human rights activist also became associates with more mostly established international rights groups such as the Human Rights Watch and Amnesty International (Browne & Nash, 2014). The European Union has also amended broad guidelines illustrating how it will support “LGBTI rights” around the world.

### **3.20. The African Human Rights System of the African Union.**

The African Human Rights system is an organ of the African Union and was established in 1986. The Charter is accountable for ensuring protection and promotion of human rights within the African continent. The fundamental purpose of the Constitutive Act of the African Union is to promote and to protect human rights (Englander, 2011). Obligations, principles and goals of the African Union comprise the agreement on the elimination of all forms of discrimination. The Charter established that states have the obligation to respect the rights of individuals by not discriminating against them and an obligation to protect individuals against discriminatory conduct by other persons (Collins, 2004). The Charter established that: “States must not only respect the rights to life and personal integrity but must also guarantee these rights through the adoption of prevention measures, investigation and punishment, as well as guarantees of non-repetition, especially regarding communities that have been historically discriminated against” (United Nations Human Rights, 2012:44). It is therefore expected that there would be some equality between the legal and political stands within the African Union (O’Flaherty & Whelan, 2008).

The African Charter on Human and Peoples’ Rights, also known as the Benjul Charter on Human and Peoples’ Rights, was adopted by the 18<sup>th</sup> Assembly of Heads of State and Government of the Organization of African Unity (OAU), held in Nairobi in June 1981 (Umozurike, 1983). It addressed the right to be free from any kind of discrimination, the right to life and the right to be free from torture and similar forms of treatment and punishment (Kiwauka, 1988). The African Charter comprises a range of mechanisms and tools, including the capacity to implement and adopt resolutions, forming working groups, and hold discussions

on certain matters. In the African Charter human dignity is an essential basic human right which all human beings are eligible to without any form of discrimination. Rights to privacy is also imbedded in the right to dignity. “The right to privacy has been one of the most important rights in the process of declaring national anti sodomy laws contrary to basic human rights” (Cock, 2003:35). Under the African Charter on Human and People’s Rights, every individual is entitled to rights without any distinction under a states party’s authority and this is repeated in 12 articles of the African Charter.

The African Charter recognizes that “...fundamental human rights stem from the attributes of human beings which justifies their national and international protection”, indicating that “...it is not a set of African values or national laws that dictate the context of any given human right, such as equality” (Rudman, 2015:14). The right not to be discriminated against based on race, age, sexual orientation and so on is one of the most basic human rights discussed in most constitutions. Article 2 and article 3 of the African Charter form the anti-discrimination and equal protection provisions. Article 2 is necessary in eradicating discrimination and Article 3 is vital because it guarantees fair and unjust treatment of individuals within a legal system of a given country (Rudman, 2015:16). The African Charter states that for all human beings to enjoy all the provided rights, laws under the African Charter must be respected in all circumstances.

Furthermore, Article 2 (non-discrimination) and Article 3 (equal protection of the law) sets up a theoretical example based on which protection can be broadened from discrimination in health facilities, employment, housing and social services (Frey, 1997). Articles 4 and 6 of the African Charter, furthermore, “...spell out the essential rights to life and integrity well as the right of every person to liberty and security of the persons” (Okere, 1984:141). The Charter refers “to the strict prohibition of an arbitrary deprivation of these rights. Article 27 stipulates that rights and freedoms have to be exercised with due regard to the rights of others, collective security, morality and common interest”; this refers to the duties of every individual vis-à-vis other individuals (Heyns, 2002:18).

One of the rights that has been discussed repeatedly under the African Charter is the right to privacy which is understood and discussed as one of the essential rights and an implicit human right under the right to dignity (Murray & Viljoen, 2007). The Inter-American Court “...established that privacy fell under the ambit of the protection of dignity” (Mowbray, 2005:57). It further concluded that right to privacy was a liberal model that was not subject to

extensive meanings and it includes, among other protected rights, right to engage and develop relationships with other human beings (Mowbray, 2005).

The Right to Respect of every individual being is also repeated in Article 2 of the Charter; while in Article 8 states that an individual's freedom of integrity might be limited at some point, and Article 13 affords every citizen rights. In addition, Chapter two of the African Charter stresses that every individual is entitled to the rights without distinction of any kind such as, colour of their skin, race, ethnic group, language, religion, political organization and any other judgment. The Chapter also states that all rights under the Charter may be appealed without any acts of discrimination against persons. Additionally, Chapter 2 stipulates that denying humans equal benefits of the law because of their personal features is prohibited (Donnelly, 2013). Rudman (2015) argued that a person's sexuality remains a private matter that is associated to her or his dignity, therefore making its protection vital.

The Commission has declared that the non-discrimination provision on the Charter is "...essential to the spirit of the African Charter and is therefore necessary in eradicating discrimination in all its guises" (Rudman, 2015:17). "The African Commission has also found that arbitrary discrimination in all its guises violates the African Charter. The Commission has found implicit in the Charter's non-discrimination articles a 'right to equality', since 'equality or lack of it affects the capacity of one to enjoy many other rights'" (Brown, 2010:850). In April 2014, the African Charter adopted its resolution 275, calling on governments to prevent and punish all types of violence targeting persons based on their real or imputed sexual orientation or gender identity. The Charter also encouraged states to authorize and efficiently apply "...appropriate laws prohibiting all forms of violence including those targeting persons on the basis of their imputed or real sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims" (Kiwauka, 1988:78).

### **3.21. LGBT movements in promoting lesbian rights through 'SOGI'.**

The inclusion of Sexual Orientation and Gender Identity (SOGI) as part of LGBT human rights in the International Human Rights Law has been part of the global discussions for years now. The SOGI movement, the Yogyakarta Principles and the Declaration of Montreal have been established to promote LGBT rights through the International Human Rights Law. The following part of this chapter briefly looks at the substantial changes that have transpired globally in the past years regarding LGBT protection.

Sexual Orientation and Gender Identity (SOGI) have become imperative theories in contemporary global politics, mainly comprising clashes over cultural diversity, identities, religion and globalization, in which sexual politics is a key component (Waites, 2009:137). SOGI is a movement on human rights, sexual orientation and gender identity by the United Nations. The aim of the campaign is to address violence and discrimination against Lesbians Gays Bisexual Transgender persons, by addressing stigmas, myths and providing alternatives for resolutions and remedy (Brown, 2009). “The categories ‘sexual orientation’ and ‘gender identity’ (SOGI) have emerged as pivotal in the contestation of human rights discourses and global governance by prevailing international lesbian, gay, bisexual and transgender (LGBT) and human rights non-governmental organizations (NGOs) and activist networks” (Waites, 2009:136).

The Sexual orientation and Gender Identity (SOGI) statements have affected the developments such as the ground breaking ‘Statement on Human Rights, Sexual orientation and Gender Identity’ (United Nations General Assembly, 2008). Sexual Orientation and Gender Identity statements are also central in the Yogyakarta Principles on the application of International Human Rights Law (Correa & Muntarhorn, 2007). High profile and well-funded non-governmental organizations (NGOs) such as Amnesty International and the International Commission of Jurists have also made the SOGI movement a centrepiece of their work (Coleman, 2013). This part of the chapter is going to look at the substantial changes that have transpired globally in the past years with regards to hate crimes against lesbian persons around the world through SOGI. Sexual Orientation and Gender Identity (SOGI) was introduced for the first time before the General Assembly in December 2008. The statement of SOGI contended that “...there is now a considerable body of decisions affirming that discrimination on the basis of sexual orientation is contrary to international human rights law” (Coleman, 2013:127). It stated further that laws criminalizing homosexual behaviour were “anachronistic” and “inconsistent with international law” and spoke of the need to overturn “decades of prejudice and intolerance” (Coleman, 2013:130-131). In June 2011 the United Nations Human Rights Council adopted Sexual Identity and Gender Identity Resolution 17/19 on Human rights, and this was the first time in history that any UN human rights member permitted a resolution in sustenance of the Sexual Orientation and Gender Identity (SOGI) movement (Chua, 2015). It was then launched in Cape Town in South Africa by the United Nations Office of the High Commissioner for Human Rights (OHCHR) on the 26<sup>th</sup> of July 2013. The resolution declared that the High Commissioner for Human Rights would construct a study that would document

violence against individuals based on their sexual orientation and gender identity, including discriminatory acts and laws in all regions (O’Flaherty & Fisher, 2008). It also declared that including the sexual orientation and gender identity principles in the International Human Rights Law can assist to track and end human rights violations and any acts of violence based on sexual orientation and gender identity. SOGI has also been able to partner with human rights organizations such as the ARC International, to address violence and discrimination of LGBT persons because of their sexual orientation and gender identity. Both movements have played a key role in advancing LGBT issues within the United Nations human rights system (Swiebel, 2009). Since 2003, the ARC International has been advocating for the advancement of LGBT person’s human rights at the international level. It seeks to “...facilitate strategic planning around lesbian issues from an international level, through a key focus on strengthening global networks, producing inside knowledge and critical analysis to assist with implementation of human rights norms and using its consultative status with the UN to enhance access to UN mechanism” (ARC International, 2016:16).

Similarly, the Declaration of Montreal seeks to fight against criminalization of homosexuality and fighting against violence towards LGBT persons because of sexual orientation and gender identity. The Declaration of Montreal was presented in Canada in July 2006 at the International Conference on LGBT Human Rights. Its proposals included the creation of a United Nations resolution on elimination of all forms of discrimination because of sexual orientation and gender identity (Kollman & Waites, 2009). The Declaration of Montreal was planned as a political document and was written by LGBT activist Joke Swiebel, who described the Declaration as “...an attempt to summarize the main demands of the international LGBT movement in the broadest possible terms” (Swiebel, 2009:87). It included a broader statement of proposals and demands for social transformation (Kollman & Waites, 2009). It also used “categories ‘sexual orientation’ and gender identity’ to formulate its proposals for worldwide government policies against discrimination, although it also used ‘LGBT’ and the concept ‘LGBT human rights’ extensively” (Waites, 2009:144).

The United Nations regarding SOGI movement recommended that protecting lesbian persons from homophobic violence, torture and cruel acts is crucial. They should be protected from inhumane and degrading treatment, criminalizing laws against homosexuality should be revoked, discrimination based on sexual orientation and gender identity should be banned, freedom of expression should be protected, and free association and peaceful assembly for all lesbian persons should be of utmost importance (McGill, 2014).

### **3.22. The Yogyakarta Principles**

The Yogyakarta Principles were published in March 2007 in Indonesia and have been introduced into courts in several countries, taking hold especially in Nepal, and present a stride in the right direction (Kollman & Waites, 2009). The document has 29 signatories including former UN High Commissioner for Human Rights Mary Robinson and Michael O’Flaherty who was a key figure in drafting the principles (O’Flaherty and Fisher, 2008). The Principles were drafted by highly regarded practitioners of International Human Rights Law, lawyers, judges from 25 countries and six continents. Resolutions that were adopted from the Yogyakarta Principles were endorsed by the General Assembly and they condemned “...violence and related human rights violations committed against individuals because of their sexual orientation and gender identity” (Kollman & Waites, 2009:12). The Yogyakarta principles defined “...the parameters for the application of existing universal human rights standards to cases involving “sexual orientation” and “gender identity” (De la Dehesa, 2010).

The Yogyakarta Principles present a declaration of global human rights related to sexual orientation and gender identity which were declared as already prevailing in the International Human Rights Law (Kollman & Waites, 2009). These principles have been recognized in various states and have already been introduced successfully in courts in countries such as Nepal (Roy, 2007). The principles provide comprehensive guidance about the level of protection that states should apply to LGBT persons (Correa & Muntarborn, 2007). “From a civil society perspective, the Yogyakarta Principles are a benchmark for the international protection of human rights in relation to Sexual Orientation Gender Identity” (Brown, 2009:821). O’Flaherty & Fisher (2008) stated that while some countries have started to make certain legal alterations, including cancelling sodomy laws, the Yogyakarta Principles seeks to fight for more improvements regarding discrimination on account of sexual orientation and gender identity and including sexual rights protection under the International Human Rights Law. The opening paragraph of the Yogyakarta Principles states that “...sexual orientation and gender identity are integral to every person’s dignity and humanity” (Scherrer, 2008:144).

Various global LGBT Rights movements have also influenced countries such as Canada and have affected the European Union and the European Court of Human Rights willingness to recognize the rights of lesbian persons as human rights as well as protection from discrimination (Platero, 2007). Through the Yogyakarta Principles they have also been fighting for the advancement of ‘sexual orientation’ and ‘gender identity’ concepts to be incorporated



in global human rights law and discourse (Waites, 2009). De la Dehesa (2008) argued that “...while yet these efforts have yet to achieve the incorporation of these categories into a UN human rights accord, both the international debates they have inspired and a growing precedent of legislation on sexual rights in various countries have undoubtedly strengthened the hand of those activists pressing for similar changes nationally”.

Kollman & Waites (2009:6) stated: “Although states and local communities still remain paramount in determining the quality of citizenship enjoyed by LGBT people, the strengthening of the global LGBT human rights movement and the access it has gained to international human rights bodies has contributed to making the human rights framing of LGBT politics increasingly dominant in numerous national settings”. The Yogyakarta Principles seeks to highlight legal developments aiming to develop solid improvements in the lives of people who suffer prejudice or discrimination because of their sexual orientation and gender identity (O’Flaherty & Fisher, 2008). “The principles are intended as a coherent and comprehensive identification of the obligation of States to respect, protect and fulfil the human rights of all persons regardless of their sexual orientation or gender identity” (Brown, 2009:809). Yogyakarta Principles are an attempt to redirect variations made by the International Human Rights Law in terms of prohibiting discrimination based on sexual orientation and gender identity in a classified form of law (Waites, 2009). The Yogyakarta Principles are anticipated to address human rights violations based on discrimination due to sexual orientation and gender identity (Thoreson, 2009). They seek to organize emerging elements of the International Human Rights Law that are helpful to victims of discrimination, but have not yet attained necessary status (Brown, 2010). The principles are primarily founded on the main human rights conventions, particularly the International Covenant on Economic Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) (Braun, 2013). The drafters of the Yogyakarta Principles aimed at demonstrating a wide range of human rights violations because of sexual identity and gender identity.

The declaration comprises of 29 Principles and all 29 principles in the document contains all the human rights which are protected under the International Law as applied to sexual orientation and gender identity (O’Flaherty & Fisher, 2008). Each principle on the documents comprises a comprehensive description of state responsibilities that are essential to guarantee and protect these rights (Waites, 2009). Many principles were adopted from the International Covenant on Civil and Political Rights, 15 principles summarize political and civil rights by the International Covenant on Civil and Political Rights (Thoreson, 2009). The International

Covenant on Civil and Political Rights (ICCPR) Article 6 is incorporated into Yogyakarta Principle 4, and it states that “everyone has the right to life, no one shall be arbitrarily deprived of life, including by reference to considerations of sexual orientation or gender identity” (Braun, 2013:85). “The death penalty shall not be imposed on any person on the basis of consensual sexual activity among persons who are over the age of consent or on the basis of sexual orientation or gender identity” (Brown, 2010:840). Similarly, with the other principles from the International Covenant on Civil and Political Rights (ICCPR) document, rights to privacy, security, freedom from torture and cruelty, freedom of assembly and association are included in the Yogyakarta Principles. All the rights have been written using the phrasing and vocabulary of the International Covenant on Civil and Political Rights (ICCPR) (Theroson, 2009). The opening paragraph of the Yogyakarta Principles states: “Sexual orientation and gender identity are integral to every person’s dignity and humanity” (Scherrer, 2008:144).

The second-largest number of the Yogyakarta Principles is inspired by the International Covenant on Economic Social and Cultural Rights (ICESCR) (McGill, 2014). “Seven of the Yogyakarta Principles correspond in part or in whole with the ICESCR Articles addressing the rights to work, social security, an adequate standard of living, adequate housing, education, the highest attainable standard of health, and participation in cultural life” (Brown, 2010:835). Article 13 of the ICESCR states that “...the State Parties to the present Covenant recognize the Right of everyone to education”, incorporated with Principle 16 in the Yogyakarta document which states that “...everyone has the right to education, without discrimination based on their sexual orientation and gender identity” (O’Flaherty & Fisher, 2008). Article 9 says that everyone has the right to liberty and security of person (United Nations Human Rights, 2012). Principles 1 and 2 assert the importance of non-discrimination as per International Human Rights Law and the “...universality, interrelatedness, interdependence and indivisibility of all human rights” (Glasius, 2009). The two Principles instruct that countries should protect “...all human rights without discrimination on the basis of sexual orientation or gender identity” (Swiebel, 2014). The main foundation for these Principles is covered on a numbered list of outlawed discrimination most which are mandates in the clauses of major human rights treaties (Waites, 2009). Other principles have been drawn from different human rights treaties. Principle 27, for instance, was drawn from the United Nations Declaration on Human Rights Defenders (UNDHR) (O’Flaherty & Fisher, 2008). Each principle also details responsibilities that are crucial for states through explicit laws and policies to ensure guaranteed human rights protection; “These includes improving policing and other anti-violence and anti-harassment

protections; updating criminal laws, procedures and sentences; awareness-raising campaigns and ensuring that the sexual orientation or gender identity of the victim may not be advanced to justify, excuse or mitigate violence” (Brown, 2009:857). Additionally, the first two Principles are supported in existing International Law, the “Right to the Universal Enjoyment of Human Rights” and the “The Right to Equality and Non-Discrimination” (Brown, 2009). The state’s obligation in enforcing required principles is to disallow not just harmful acts but also acts that seek to intimidate, permit or fail to punish harm is emphasized under the Yogyakarta Principles (Waites, 2009).

Furthermore, most Principles from the Yogyakarta declaration emphasize the duty of the state to eliminate and ban discrimination against LGBT persons based on their sexual orientation. Principle 1 declares that all human beings regardless of their sexual orientation or gender identity are eligible to enjoy all basic human rights (Donnelly, 2013). Principle 2 is also a reassertion of the existing law founded on the initial consent that all forms of arbitrary distinction are prohibited by the International Human Rights Law (Brown, 2010:849). Principle 7 asserts that “arrest or detention on the basis of sexual orientation or gender identity, whether pursuant to a court order or otherwise is arbitrary” (Bochenek & Knight, 2012:24). Principle 12 declares that states have a duty to “eliminate and prohibit discrimination on the basis of sexual orientation and gender identity in public and private employment” (Brown, 2009:855). However, Kollman & Waites (2009) believed that variety of human rights remaining in the Yogyakarta Principles have not yet been addressed by the interpreters of International Law. These include “...the right to security of the person, the rights to an adequate standard of living, the right to participate in cultural life, the right to participate in public life, and the right to promote human rights” (Brown, 2010:856). According to Braun (2013), supporting these rights requires applying principles of non-discrimination and equality before the law. However; human rights courts and other authoritative interpretative body have not made any amendments in favour of these rights with respect to sexual orientation and gender identity (Brown, 2010).

According to Brown (2010:868), “The inclusion of a large number of principles that address very concrete and widely-suffered injustices renders the principles useful tools to advance human rights. The Council of Europe’s Human Rights Commissioner’s Office has started to use the Yogyakarta Principles for “country and thematic monitoring related to discrimination and human rights violations based on sexual orientation and gender identity” (O’Flaherty & Fisher, 2008:207). The Asia Pacific Forum of National Human Rights Institution “has requested its members to report on their activities in relation to human rights to and sexual

orientation and gender identity, with reference to the Yogyakarta Principle (Brown, 2010:871). The UNHCR and UN Office on Drugs have published handbooks regarding ‘risk factors faced by women and girls with regard to sexual orientation’, and ‘lesbian prisoners’; the handbooks cited the Yogyakarta Principles about addressing violence against these populations (Sanders, 2008).

The Yogyakarta Principles have also provided the “inspirations for, or even been explicitly referenced in, a number of non-binding declarations by international organizations” (Brown, 2010:872). The African Commission on Human and Peoples’ Rights has been studying the likelihood of constructing the Yogyakarta Principles to be publicly acknowledged (O’Flaherty & Fisher, 2008). Thoreson (2009) supported this by saying that this step would improve poor human rights record regarding issues of sexual orientation and gender identity in African countries. Several States have adopted the Principles as part of the foreign policies, In Netherlands, the government “regards the Yogyakarta Principles as a guideline for its policy”; among these efforts, Brazil also distributed thousands of copies translated into Portuguese as part of its continuing “Brazil without Homophobia” movement (Brown, 2009:821). In Nepal, the Yogyakarta Principles have been appealed successfully; therefore, there is a great chance that it will succeed even in other countries (Roy, 2007). Brown noted that the main difference between the ICESCR and the Yogyakarta Principles is that the former did not reveal the “progressive realization” mandate of the latter (2010:835). The Yogyakarta Principles also requires states to guarantee human rights to every citizen without limitations and also requires states to refrain from violating human rights (Brown, 2009).

### **3.23. Conclusion**

Studies have revealed that there is still significant room for improvement to the protection and promotion of lesbian rights. It is vital for the Global Human Rights institutions such as the United Nations and the African Union together with Human Rights Activists, NGOs, and the international community at large to protect and promote lesbian human rights and to prevent human rights violations of sexual minority groups including lesbian persons. Preventing human rights violations means every state and government officials should accept homosexuality as just another layer of diversity in African societies, the existence of sexual minorities should be part of every legislative discussion (Rudman, 2015). According to the United Nations it is possible for states to work together in protecting and promoting lesbian human rights, and to advance and include sexual orientation and gender identity as part of the international human

rights law. Evidently, “implementation of human rights standards is left primarily to government, but the UN-organized economic boycotts of Rhodesia and South Africa prove that the world can act together to authorize action to enforce human rights standards by punishing unacceptable practices” (Haas, 2008:99).

Global human rights institutions have a duty to protect and fight against discrimination of all persons regardless of their sexual orientation or gender identity, it should also protect violation of their human rights. The international community should work together with human rights activists to promote sexual rights and to assist one another in solving the subject pertaining the ill-treatment of lesbian persons. Law enforcers and state officials should also play their part in fighting against lesbian human rights violations and preventing any acts of violence that target lesbian persons. The United Nations and its member states are responsible for promoting equality and advocating for a non-violent society that is inclusive and free of discrimination, and should therefore work together to decriminalize homosexuality in those states that have banned homosexuality. A broad-based society is a society that is inclusive, in line with the notion of the universal approach to human rights and also aims to be part of the international community. Therefore, fighting against human rights violations is essential for every state (Stein, 2017).

Government officials and traditional leaders should establish public education initiatives to assist “...increase awareness of the equality clause and principles of non-discrimination in all sectors of the society” (Lewin, Williams & Thomas, 2013:94). The government should also establish systems to assist in monitoring and evaluating acts of hate crimes in government departments (including the departments of health, education and the police), and the National Prosecuting Authority to ensure proper implementation of existing anti-discrimination laws and standards (Judge & Nel, 2008:36). Every department’s gender executive, in association with civil societies, should develop a national plan to guarantee that minority groups including lesbian persons benefit from the current constitutional rights to personal security, education, and freedom of expression from a local, provisional and national level (O’Flaherty & Fisher, 2008).

Police officers should be educated and equipped to understand, accurately document and handle cases of any acts of violence against lesbian persons or any violence that is perpetrated because of one’s sexual orientation or sexual identity and they should be addressed and documented in a non-judgmental manner. In addition, health professionals should also be

trained to provide services to any persons regardless of their sexual identity or sexual orientation. "...in order to respect, protect and fulfil the right to life and security of person guaranteed under international law, states must effectively investigate, prosecute and punish perpetrators responsible for extrajudicial executions, and enact hate crime laws that protect individuals from violence on basis of sexual orientation and gender identity" (United Nations Human Rights, 2012:21). All members and organizations in the field of human rights "...must cooperate with the United Nations in promoting both universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion" (Sohn, 1977:131).

In conclusion, this chapter has investigated and discussed different forms of hate crimes perpetrated against lesbian persons, including causes of hate crimes. It has also discussed the main argument which is used to fight against discrimination of homosexuality in many African states such as that homosexuality is un-African and should be banned. Reasons for under-reporting have been discussed. This chapter has also demonstrated the need for the intervention of the international community in fighting against discrimination of lesbian persons on grounds of sexual orientation or gender identity and promoting LGBT human rights. Providing literature on sexuality and basic human rights as per the international human rights law. The contribution of the UN role and human rights mechanisms and global human rights institutions have been discussed, as well as the role of states and international LGBT movements in promoting and protecting LGBT rights. The following chapter discusses the research design and research methodology utilized to evaluate the study's overall reliability and validity.

## **CHAPTER FOUR: RESEARCH DESIGN AND APPROACH.**

### **4.1. Introduction.**

Creswell defines research as a “process of steps used to collect and analyse information to increase our understanding of a topic or issue, it consists of three steps: pose a question, collect data to answer the question, and present an answer to the question” (in Tashakkori & Creswell, 2008:95). Research includes “defining and redefining problems, formulating hypothesis or suggested solutions; collecting, organizing and evaluating data; making deductions and reaching conclusions; and at last carefully testing the conclusions to determine whether they fit the formulating hypothesis” (Woody in Kothari, 2004:1). The main purpose of research is “...to discover answers to questions through the application of scientific procedures. The aim is to find out truth which is hidden, and which has not been discovered as yet” (Kothari, 2004:2).

Research design is an essential component for any study because it follows a characteristic sequence where an understanding of a problem is identified, investigative stance is adopted, and a form of intervention strategy occurs (Ritchie, 2003). A research design creates an outline for the collection, analyses and measurements of data in a study. According De Vaus (2001), research design refers to the broad strategy that have been chosen to incorporate the different components of the study in a rational and logical way, thus, ensuring that while efficiently addressing the research problem. The purpose of a research design is to confirm that the evidence assists effectively in addressing the research problem rationally and as unambiguously as possible (Cresswell & Cresswell, 2001).

Schneider (2005) noted that a method refers to the practical stages engaged when one is conducting a research. In this part of research actions to be taken to investigate a particular research problem are discussed and explored; furthermore, the foundation for the applications of the exact measures or techniques utilized to recognize, select, process, and examine the evidence applied to understanding the problem, thus, assisting the reader to engage critically in evaluating the study’s complete validity and reliability (Kallet, 2004). In addition, description of research methods typically involves firstly defining them and then asserting why one have chosen to utilize a specific method to probe a research problem, therefore, outlining the measures utilized to identify, collect and process data (Kothari, 2004).

## **4.2. Quantitative and Qualitative Methods, and Mixed Methods**

To implement a research design and answer a research question, methodology is required (Cresswell & Cresswell, 2017). Kothari discussed methodology as an important aspect for any research paper, he states that one needs a reliable method in order to produce reliable results (2004). Methodology discusses the fundamental reasoning of why a particular method have been chosen and used and this discussion includes defining the hypothetical theories that explain the varieties of techniques within the broader nature of academic work and appraising the significance by investigating the study problem (Reynolds, 2005).

The purpose of this research was to investigate experiences of hate crimes against lesbian persons in KwaZulu-Natal. To gain a better understanding of hate crimes perpetrated towards lesbian persons in Kwazulu-Natal, the study used mixed research method which is a blend of qualitative and quantitative research method. This study focused on two aspects. The first part investigated lesbian experiences of violence and hate crimes, both real and perceived within the lesbian relationships, family community. As per Herek (1988), for an in-depth understanding of lesbian experiences or any perspectives which underlie the lesbian own stories, qualitative research is essential. As violent acts against lesbian persons may be rooted in negative attitudes towards lesbian persons, the second part focused on probing and exploring negative attitudes towards lesbian persons in the South African context. This chapter provides a methodological outline that was adopted. This part of the research is very crucial because it explains how the study was carried out how data were obtained, and the methods that were utilized to collect data and how they were applied in the study.

According to Creswell (2013:266), mixed methods research "...involves the collection of both qualitative (open ended) and qualitative (closed-ended) data in response to research questions or hypotheses". Mixed-method research is one of the three main research approaches, it is generally defined as the combination of qualitative and quantitative research methods, concepts or approaches. Bazeley (in Johnson et.al, 2007:119) said that mixed-method research "...involves the use of more than one approach to or method of design, data collection or data analysis within a single program of study, with integration of the different approaches or methods occurring during the program of study, and not just at its concluding point". He added that the method includes more than just a combination of quantitative and qualitative research methods but, rather, reveals a new 'third way' epistemological model that lodges the theoretical space (Johnson, 2017). Greene (in Johnson, Onwuegbuzie & Turner , 2007:119) said: "Mixed



method inquiry is an approach to investigating the social world that ideally involves more than one methodological tradition and thus more than one way of knowing, along with more than one kind of technique for gathering, analysing, and representing human phenomena, all for the purpose of better understanding”

Quantitative research is established on the abilities of quantity or amount, and it is related to phenomena that can be communicated in terms of quantity (Kothari, 2004:4). The main aim of a quantitative research study is to categorize features, tally them, and create numerical models in an attempt to describe what is being experimented (Black, 1999). Firestone (1993) differentiated qualitative research methods from quantitative research methods based on four dimensions – assumptions, purpose, approach, and research role. The quantitative research method assists one in defining the connection or correlation between an independent variable and a dependent or outcome variable within a particular population (Creswell & Creswell, 2001). The method simply deals with reasoning, numbers and independent position, focusing on numeric and statistical detailed data, convergent perception rather than divergent perception, for instance, generating a series of ideas about a particular research problem in an impulsive, free-flowing mode (Creswell & Creswell, 2001). Quantitative research method requires using planned or structured research tools to collect data. For instance, a researcher should have a clearly well-defined research questions to which objective or neutral answers are required (Bazeley, 2006). To gather numerical data one can, use tools such as questionnaires.

In contrast, qualitative research methodology refers to research that produces descriptive data from people’s personal written or spoken words and observable behaviour; “...it is concerned with the meaning people attach to things in their lives” (Taylor, Bogdan & DeVault, 2015:7). This research method is used to explore opinions and social circumstances that would otherwise not be discovered (Berg, Lune & Lune, 2004). Understanding persons from their own setting of position or reference ‘experiencing reality as they experience it’ is essential to qualitative researchers (Corbin & Strauss, 2008). “Qualitative researchers empathize and identify with the people they study in order to understand how these people see things” (Taylor, Bogdan & DeVault, 2015:8). This type of research method is concerned with qualitative events, for instance, events that are related or involving same features, for example, when one is interested in investigating the reasons for human behaviour, why people behave in a certain way, attitudes and opinions, and what they think about a particular subject (Kothari, 2004). Furthermore, the aim of this type of research method is to discover the original motive and desire by using in-depth interviews for this purpose (Marshall, 1996). Qualitative research method is designed to

determine the essential motives of human behaviour, through investigating different factors which stimulate persons to act in a specific way or which make people like or dislike a particular occurrence (Kothari, 2004:5). The aim of this type of research is to learn the basic motivations and desires, using in-depth interviews (Berg, Lune & Lune, 2004). Thorne, 2000 substantiated this by saying that a qualitative research method is designed to discover the underlying human behaviour, to discover people's opinions and attitudes towards a particular subject, behaviour or institution. Collecting data through qualitative interviews can be a valuable source for systematic theorizing of formal hypothesis testing (Becker, 1996). The qualitative part of this study aimed at enhancing knowledge and insight into the lives and experiences of lesbian persons in KwaZulu-Natal.

#### **4.3. Research Sites**

This study took place in KwaZulu-Natal. Three groups of self-identifying lesbians were interviewed for the first section on lesbian experiences of violence. The first group that was interviewed was sampled at the University of KwaZulu-Natal LGBTI Forum (Pietermaritzburg Campus). The second was sampled at the Pietermaritzburg Gays and Lesbian Network (GLN), and the third group was sampled from the Ladysmith Gay and Lesbian Network. The University of KwaZulu-Natal is located in an urban area as well as the Pietermaritzburg Gay and Lesbian Network, whereas Ladysmith is mixture of both urban and rural. Thus, respondents were from both the rural area and urban area around these places. The LGBTI Forum at the University of KwaZulu-Natal is the only support system available for lesbian individuals at university. Similarly, the Gay and Lesbian Network is the only support system for lesbian individuals residing around Pietermaritzburg and Ladysmith areas. A list of self-identifying lesbians who were sampled from the Gay and Lesbian Network was provided by the Gay and Lesbian Network coordinator and the list of self-identifying lesbians at the University of KwaZulu-Natal was provided by the CHASU Health Promoter. All the sampled participants were members of the above-mentioned forums, self-identified as lesbian, and had experienced violence and hate violence from either their partners, family and community members.

The second part of the study which investigated heterosexual person's attitudes towards lesbian persons sampled students from the University of KwaZulu-Natal (Pietermaritzburg Campus). 99 respondents who identified themselves as heterosexual were recruited and they were all students at the University of KwaZulu-Natal. The sampled respondents' nationality or race

included Indian, White and international students (students from outside South Africa), but the majority of the respondents were black Africans. All respondents were approached in person around the Campus, accurate details about the nature of the study were provided in the questionnaire and also explained verbally. Respondents were asked if they were willing to complete the questionnaire. All respondents completed the questionnaire voluntarily. All 99 participants were given questionnaires that they filled in and returned.

The interviews took place at University of Kwazulu-Natal Pietermaritzburg Campus, in one of the venues where the LGBTI Group held their weekly meetings, sometimes respondents were interviewed in another setting where they were comfortable. For the Gays and Lesbian Network LGBTI Forum respondents were given questionnaires to fill in and returned them when they were completed and were checked for any errors. Regarding the Ladysmith LGBTI Forum interviews were also held where they held their weekly support group meetings.

#### **4.4. Sampling and sample selection techniques**

The purposive sampling technique, also called judgment sampling, is the deliberate choice of an informant used to select study participants based on the qualities the participants possess. It may be used with both qualitative and quantitative research techniques (Tongco, 2007). The method is non-random, it does not require original theories or a fixed number of participants; the researcher simply decides the topic and questions to be studied and recruits participants who are willing to provide the needed information by virtue of experience and knowledge (Bernard, 2002). The first consideration of using this sampling technique is to identify and sample the population competently. Defining the study population precisely helps the researcher to understand exactly who part of the study is and who is not and gives precise details of how many participants were involved in the study (Munn & Drever, 1990). Using purposive techniques requires one to understand the population culture before sampling participants, this will help to efficiently obtain reliable and knowledgeable participants (Snedecor & Cochran, 1979).

Using purposive sampling, the study approached 60 self-identifying lesbians from the Gay and Lesbian Network, 30 from the Pietermaritzburg group and 30 from Ladysmith group, and 40 from the University of KwaZulu-Natal Pietermaritzburg Campus. However, only 45 from the Gay and Lesbian Network and 24 from University of KwaZulu-Natal Pietermaritzburg Campus were able to participate because of personal commitments. To make it easier to recruit participants for the study, contact was made with the LGBTI Forum chairperson and CHASU

Health Promoter from UKZN PMB Campus, and the Gay and Lesbian Network coordinator who were all willing to assist and informed the participants about the study. Contact was also made with the participants before the study commenced. A letter of gatekeeper permission (Appendix B) and informed consent was drafted seeking permission to interview willing participants from the Forums.

#### **4.5.1. Participants in first part of study on lesbian experiences**

For the first part of this study, participants included 45 GLN members and 24 UKZN members, making a full sample of all the respondents in this part of the study self-identified lesbians to be n=69. They all identified as black in race. The respondents ranged from 18 to 62 years of age. 57% of the respondents were still in a tertiary level and had not done any formal education beyond Matric. 29% stated that they were unemployed and 14% stated that they were employed. 59% stated that they resided in urban areas and 40% stated that they resided in rural areas.

#### **4.5.2. Participants in second part of study on attitudes towards lesbians**

For the second part of the study, there were 98 participants from UKZN. 57% of respondents in this part of study identified themselves as females and 40% identified themselves as males. The full sample (n=98) of participants responding to the attitudes towards lesbians questionnaire were predominantly black (85%), with another 9% Indian, and 1% white. The remaining 5% classified themselves as 'International students' (Zimbabwean, Zambian, and so on). Female respondents ranged from 18 to 32 years of age, and male respondents ranged from 18 to 40 years of age. 88% of respondents were undergraduates and had not accomplished any education beyond high school; only 12% had earned their higher or bachelor's degree.

#### **4.6. Research Instruments**

Qualitative research methods inspire more substantially information and in addition providing a stage to gain more extensive understanding of the event (Creswell, 2013). To collect data for this study, a self-administered questionnaire with closed and open-ended questions was used to investigate tangible experiences of hate activity against lesbian persons in September 2018. Using open ended questions allowed the researcher to obtain as much data as possible, unlike pre-arranged questions, open ended questions allowed respondents to answer questions from their own setting of position, respondents express their opinions freely (Bodgan, Robert & Sari Knopp Biklen, 1997).

Research questionnaires are commonly utilized to produce both qualitative and quantitative data (Bryman, 2006). According to Munn & Drever (1990), questionnaires are a popular way of collecting data; they are easier to administer; they do not take a lot of time to develop or respond to, they anonymity for the respondent, and they often have standardized questions.

#### **4.6.1. Questionnaire on lesbian experiences**

The questionnaire had five sections. The questionnaire was available in English and questions were phrased in a simple close-ended and open-ended method. As such, the questionnaires were planned in a manner that allowed respondents to respond to questions the way they wanted. All questions measured issues around experiences of violence towards lesbian persons. Section A focused on biographical information and how openly gay participants saw themselves. Section B had eighteen questions and measured violence and hate crimes experiences in a family setting. Section C had eighteen questions and measured experiences in a community setting. Section D had eighteen questions and measured experiences in relationships, and Section E required a description of experiences. All experiences were rated on a six-point Likert-type scale from 0 (never) to 6 (it seems like almost every day). Therefore, the questionnaire had 54 closed questions exploring various experiences of violence with respect to family, community and intimate partner, focusing on verbal insults, physical abuse, weapons and sexual abuse (quantitative data) and an open question asking for further description of these (qualitative data). Respondents were offered a reasonable variety of answers to choose from. The questionnaires helped to probe nature of violence and hate crime experiences of lesbian self-identifying persons in the province of KwaZulu-Natal and to develop the relevance of the study. The questionnaire also included the biographical information and contact details of participants at the end voluntarily for the purpose of doing follow-ups if required. A copy of the questionnaire may be found in Appendix C.

#### **4.6.2. Questionnaire on attitudes towards lesbians**

Similarly, the second part of the study utilized questionnaires to explore opinions and attitudes towards lesbian persons, which produced quantitative data and qualitative data. Creswell (2013:23) argued that to evaluate the issue by method for creating numerical data which is used to quantify attitudes, opinions, behaviours, and other defined variables "... quantitative research methods involve the processes of collecting, analysing, interpreting, and writing the results of a study. According to Munigal (2016), qualitative research aims to get a better understating through first-hand experience, honest reporting, and references of tangible

conversation. Thorne (2000) noted that qualitative methods explore real or hidden agendas of organizations as opposed to stated agendas, in this way qualitative methods have been used to explore negative attitudes of heterosexual persons towards lesbian persons.

A questionnaire consisting of 22 closed questions expressing either negative or positive attitudes (quantitative data), with room for comment at the end (qualitative data) was used. A copy of this questionnaire may be seen in Appendix D. The qualitative methods were used as a way of understanding attitudes towards lesbian persons in the university environment. Goodman (1997) stated that questionnaires are easier to administer, they can be completed by correspondents in their own time, data can be obtained from a large number of people, the same questions are presented to all correspondents, therefore, much care is required when in drafting questions. Questionnaires can offer a researcher a decent descriptive data. In this part of study, respondents were given an opportunity to respond to questions at their own pace to avoid mistakes and fear to respond truthfully to the questions.

Likewise, the responses to this questionnaire were totally confidential, respondents were asked to provide some personal details; age, gender and race, name and other identifying information was not required. All questions measured attitudes towards lesbian persons, and all questions on a three-point categorical scale with 1 (I disagree), 2 (I am neutral), and 3 (Yes, I agree). Using this research method helped to understand people's attitudes towards lesbian persons. In this regard, using theories is crucial because they help us to understand and explain events, to understand behaviour and opinions (Bernath & Vidal, 2007). In this study, research methodology assisted with predicting the direction of a study by providing a detailed intention of choosing to use a blend of qualitative and quantitative research method. Critically analysing research methods that were used, enabled the researcher to read, understand and analyse results without difficulties (Trumbull, 2005).

To gain a better understanding of heterosexual persons' attitudes towards lesbian persons, it should be first understood how they feel about lesbian sexuality, social norms and other invoked explanation (Weinburg, 2002). Hence the exploratory research method was adopted to achieve this goal. Stebbins (2001) noted that exploratory research method aims merely to discover specific research questions but does not offer final and conclusive answers to those specific problems; it is commonly conducted to investigate a problem that has not been clearly studied and it endeavours to determine whether or not a phenomenon occurs.

#### **4.7. Procedure and Ethical Considerations**

The research proposal was submitted to the UKZN Research Ethics Committee for ethical approval. This was done to uphold the ethics of researchers as well as ensure that participant's rights and morals were safe guarded and respected. Ethical considerations can be specified as one of the most important parts of the research (Berg, Lune & Lune, 2004). The Ethical Approval (Certificate number HSS/2261/017M) may be found in Appendix A.

Following the research procedures, all research documents were sent by email to the coordinators of the forums. The participants were then informed through their organizations to complete the questionnaire at their convenience.

##### **4.7.1. Informed consent and approval**

Obtaining informed consent from people who are part of the population that is being studied is regarded as an essential component of the ethical conduct of research (Tinker & Coomber, 2004). It requires that persons in a position to provide information that is required to study the phenomenon consent freely to participate in the study and should be given an opportunity to withdraw from the study if they wish to do so (Crow, Wiles & Charles, 2006). As per Potter (2006:213), "No significant data should be gathered from people who have not consented, been given a clear statement about why the information is going to be collected or be told how it is going to be used". For this study, consent was sought through the questionnaire. In order to promote willingness to share information honestly participants were informed that they were free to participate in the study if they were willing and they were free to withdraw from the study at any time (Hegan, 1997). Participants were also informed about the risks and the purpose of the study. The informed consent letters were drafted in English. Information of the study was provided to the participants and were informed that their participation is totally voluntary; there were not going to get any incentives for being part the study, which they were also free to withdraw if they did not wish to be part of the study.

To carry out the study, permission was also sought from the GLN and the University of KwaZulu-Natal's Registrar. (Appendix B.) An email seeking permission to access the group of participants was sent to CHASU Health Promoter at UKZN Pietermaritzburg Campus. Similarly, Gays and Lesbian Networks received a letter seeking permission to access both the Pietermaritzburg LGBT Group and Ladysmith LGBT Group.

#### **4.7.2. Confidentiality and anonymity**

The notion of confidentiality is underpinned by the principle of respect for autonomy and is taken to mean that identifiable information about individuals collected during the process of research will not be disclosed without permission (Wiles, Crow, Heath & Charles, 2008). The concept of confidentiality is closely connected with anonymity in that anonymity is one way in which confidentiality is operationalized (Miles, Huberman & Saldana, 2014). All participants were assured that their rights would be respected and all the information they provided was confidential. In addition, participants were assured that their identities would be protected throughout the study and after the study. This made it easier for them to participate in the study freely. In this study, participants were assured that all the information they provided will be protected and used for scholarly research only. They were also assured that the information they provided would be presented anonymously.

In cases where respondents were uncomfortable with responding to questions, an opportunity to decide whether they wanted to continue participating in the study was given. During data collection and after the data collection UKZN Campus HIV AIDS Support Unit and Gay and Lesbian Network provided counselling services for the participants.

#### **4.8. Data processing and analysis**

Data analysis is the most crucial part of any research. Data analysis summarizes collected data and involves the explanation of data collected through the utilization of analytical and rational reasoning to determine trends, patterns or relationships (Spencer & Ritchie, 2002). “Data analysis is fundamentally about data-reduction-that is it, it is concerned with reducing the large body of information that the researcher has gathered so that he or she can make sense of it” (Bryman, 2016:329).

When all the data were collected for both parts of the study, all questionnaires were checked immediately after the respondents returned them, to check for any missing information before data were organized. All the questionnaires were coded and filed differently to make it easier to differentiate who belonged under which group. “Coding is a process whereby the data is broken into their component parts and those parts are then given labels” (Bryman, 2016:392). As such, the questionnaires were also arranged numerically and prepared for transcription and computer analysis. All the information was then captured on a spreadsheet for further descriptive analysis. Further quantitative data analysis was done on the spreadsheet.



All comments – the qualitative aspects – were also transcribed. To keep the originality of the shared opinions and experiences narrative analysis was adopted. The purpose of narrative analysis is to identify the types of stories told about the researched phenomena and the varieties of the study representing the phenomenon in culture and society (Riessman, 1993). Narrative analysis focuses on the transcripts and the environment; using this analysis in a research produces generalized thoughts, actions, meanings and attitudes related to the phenomenon (Bryman, 2016).

In conclusion, the qualitative and quantitative methods, and mixed research methods have been used to identify, collect and produce adequate suitable data for this study. This chapter has also engaged appropriate research design and has discussed main features of why these particular research designs or approaches have been chosen as relevant for this particular study.

## CHAPTER 5: RESULTS.

According to Bryman (2016:356) “Data analysis is a stage that incorporates several elements. At the most obvious level, it might be taken to mean the application of statistical techniques to data that have been collected”. There were two focus areas in this research. The first area was lesbian experiences of violence. This was assessed with a questionnaire which yielded both quantitative data and qualitative data from the comments on the questionnaires. The second area was attitudes toward lesbians which was investigated by means of a questionnaire, which yielded primarily quantitative data, with a few comments suitable for qualitative analysis. The two focus areas are presented separately here.

### 5.1. Lesbian experiences of violence

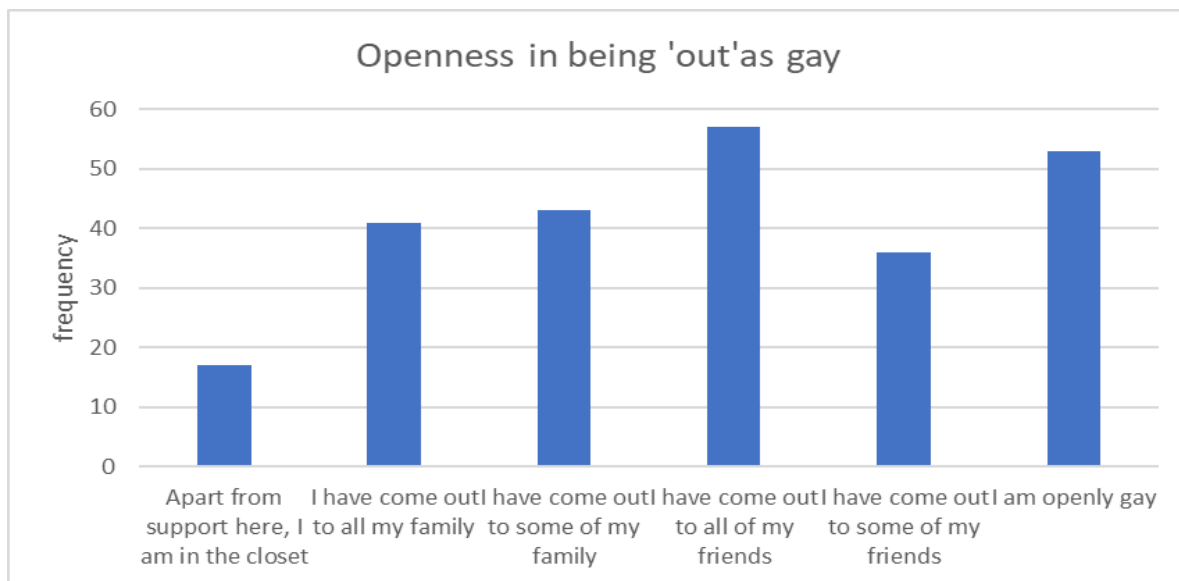
This part of the study assessed lesbian experiences of violence using a questionnaire which yielded both quantitative data and qualitative data. Three subcategories existed within the area of evaluating lesbian experiences of hate crimes: family, community and interpersonal relationships. Most of respondents’ experiences in this study fell into social experiences. Descriptive quotes by participants are provided to support the themes discussed in this chapter. The data were obtained from 69 black lesbian women in the age range 18 to 62 years old, all with matric and many in tertiary education. 20 were employed, and of those who indicated, 40 lived in urban areas and 28 in rural areas.

#### 5.1.1. ‘Out’ Status

‘Out’ status refers to who in these women’s lives knew they were lesbian. This may be seen in Table 5.1 and is represented graphically in Figure 5.1. (The categories are not exclusive and may overlap).

**Table 5. 1: ‘Out’ Status**

	Apart from support here, I am in the closet	I have come out to all my family	I have come out to some of my family	I have come out to all of my friends	I have come out to some of my friends	I am openly gay
Number	17	41	43	57	36	53
Percentage	24,6	59,4	62,3	82,6	52,2	76,8



**Figure 5. 1: 'Out' Status**

From Table 5.1 and Figure 2 it can be seen that 76, 8% stated that they were openly gay while 24, 6 % of the respondents stated that they were in the closet. 59, 4% have come out to all their family members while 62, 3% had come out to some of their family members. 82, 6% came out to all their friends while the remaining 52, 2% only came out to some of their friends.

### **5.1.2. Experiences of violence within the family.**

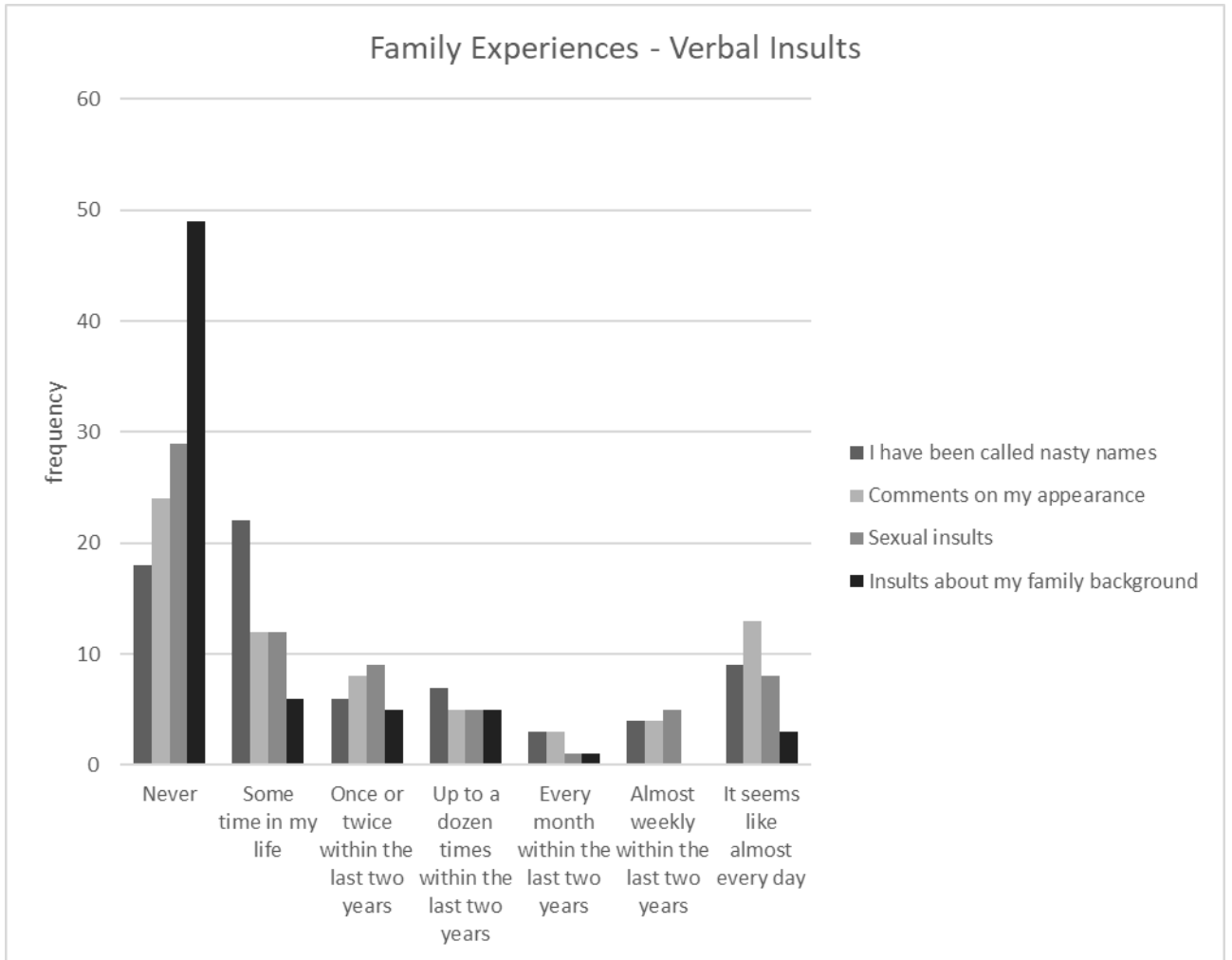
18 questions were posed about how often the respondents had experienced different forms of violence within their families, community and interpersonal relationships because of their sexuality. The response options were *never, some time in my life, once or twice within the last two years, up to a dozen times within the last two years, every month within the last two years, almost weekly within the last two years, and it seems like almost every day*. The questions assessed experiences of enacted hate crimes within four general categories: verbal insults, physical experiences, weapons, and sexual abuse.

To assess violence, respondents were asked how often they had experienced verbal insults (“called nasty names, comments on my appearance, sexual insults, and insults about my family background”); physical experience (“things have been thrown at me; I have been beaten up by someone in my family; I have been hit by someone in my family”); weapons (“I have been threatened with a bottle, I have been injured with a bottle, I have been threatened with stones, I have been injured with stones, I have been threatened with a knife, I have been stabbed with a knife, I have been threatened with a gun, I have been shot with a gun”), sexual abuse (“I have been molested, I have experienced forced digital penetration, I have been raped”).

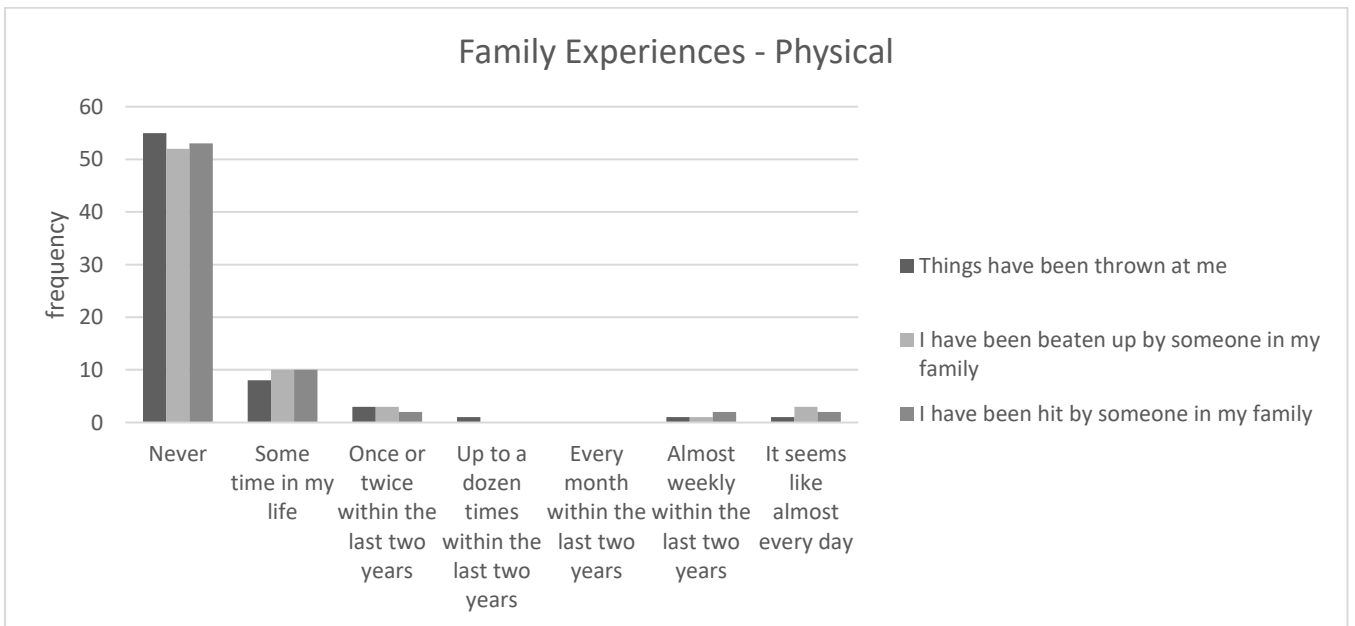
The experiences of violence within the family may be seen in Table 5.2 and are represented graphically in Figures 5.2, 5.3, 5.4 and 5.5.

**Table 5. 2: Lesbian Experiences of Violence within the Family**

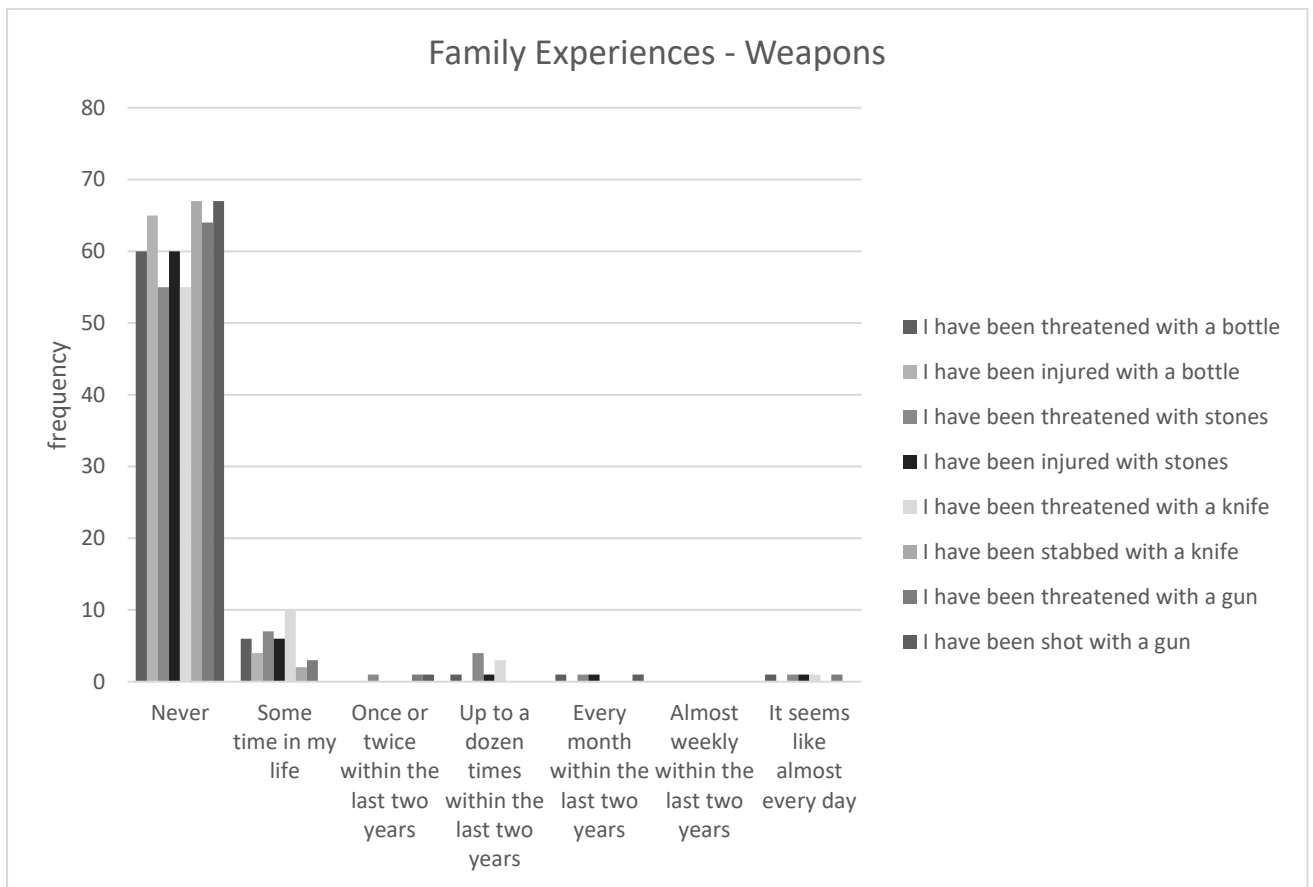
	Never	Some time in my life	Once or twice within the last two years	Up to a dozen times within the last two years	Every month within the last two years	Almost weekly within the last two years	It seems like almost every day
<b>Verbal Insults</b>							
I have been called nasty names	18	22	6	7	3	4	9
Comments on my appearance	24	12	8	5	3	4	13
Sexual insults	29	12	9	5	1	5	8
Insults about my family background	49	6	5	5	1	0	3
<b>Physical Experiences</b>							
Things have been thrown at me	55	8	3	1	0	1	1
I have been beaten up by someone in my family	52	10	3	0	0	1	3
I have been hit by someone in my family	53	10	2	0	0	2	2
<b>Weapons</b>							
I have been threatened with a bottle	60	6	0	1	1	0	1
I have been injured with a bottle	65	4	0	0	0	0	0
I have been threatened with stones	55	7	1	4	1	0	1
I have been injured with stones	60	6	0	1	1	0	1
I have been threatened with a knife	55	10	0	3	0	0	1
I have been stabbed with a knife	67	2	0	0	0	0	0
I have been threatened with a gun	64	3	1	0	0	0	1
I have been shot with a gun	67	0	1	0	1	0	0
<b>Sexual abuse</b>							
I have been molested	54	12	1	2	0	0	0
I have experienced forced digital penetration	62	6	1	0	0	0	0
I have been raped	52	14	1	0	0	0	2



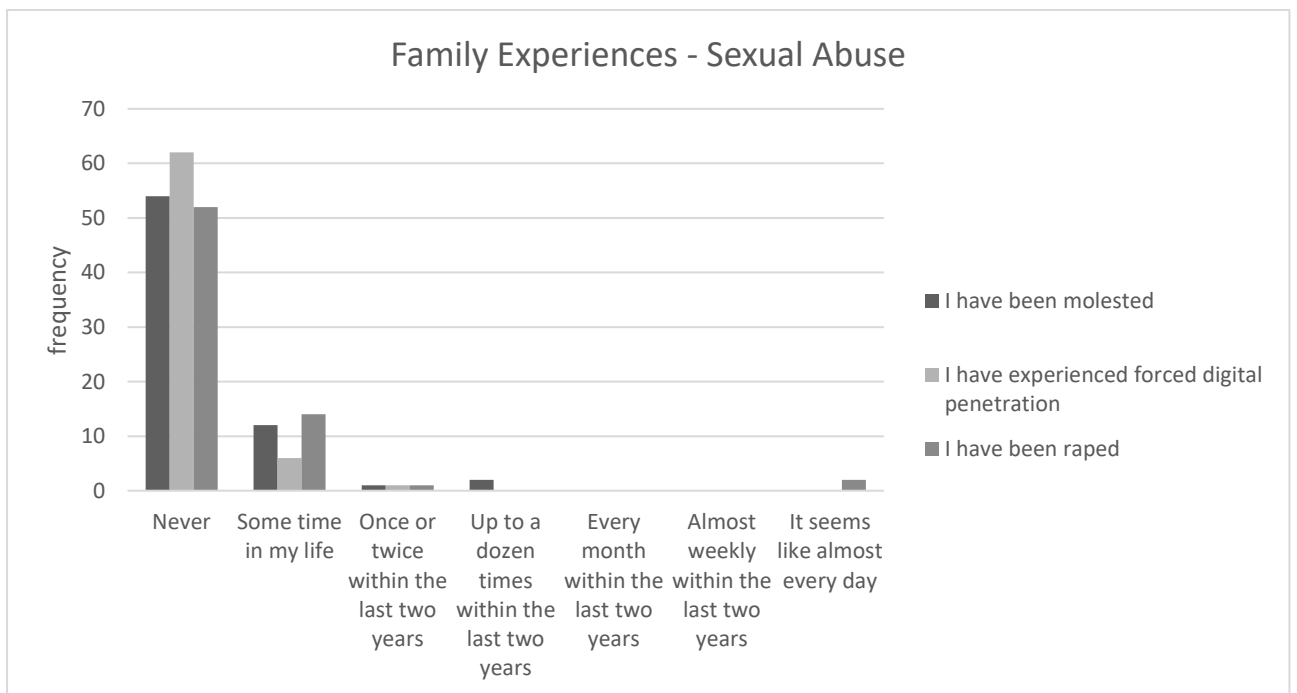
**Figure 5. 2: Experience of verbal insults**



**Figure 5. 3: Physical violence within the family.**



**Figure 5. 4: Violent experiences with weapons within family.**



**Figure 5. 5: Sexual abuse within family.**

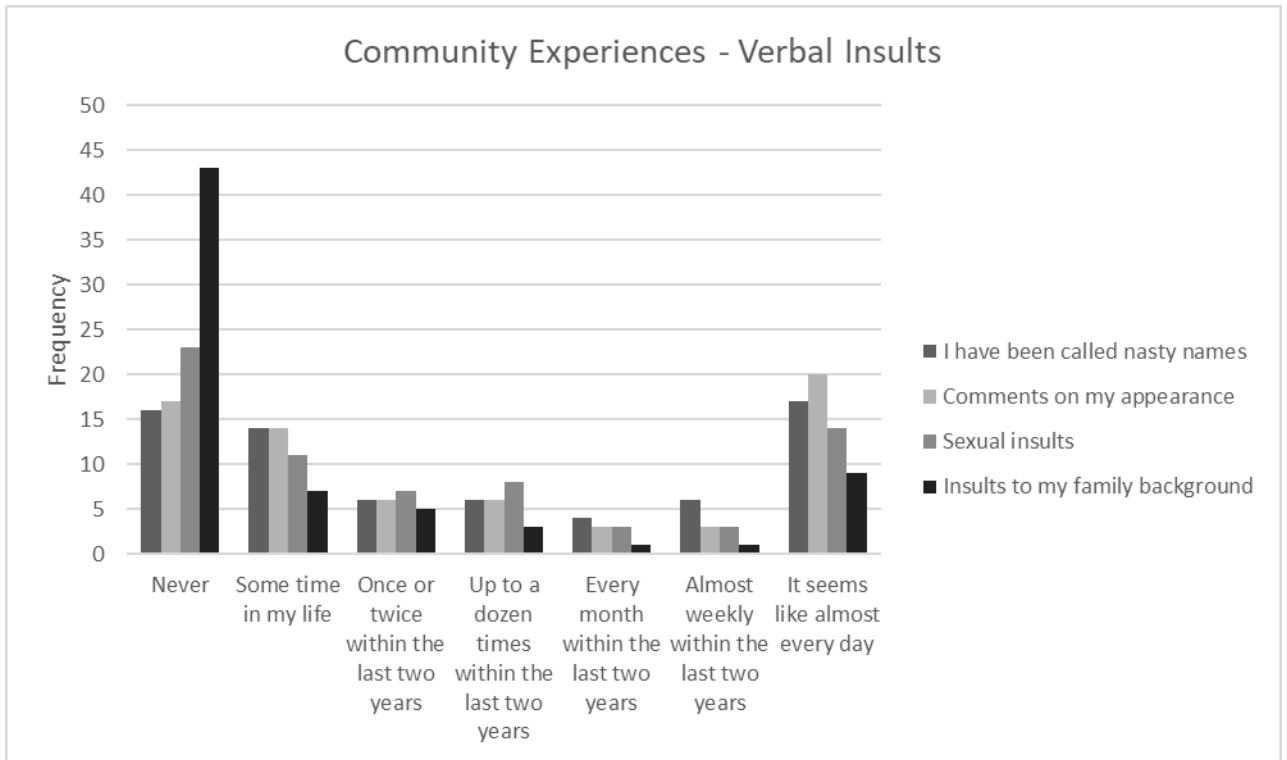
Table 3 and Figures 5.2, 5.3, 5.4 and 5.5 present the occurrences of verbal abuse, physical abuse, use or threats of weapons, and sexual abuse experienced by the sampled respondents within their families. It can be seen that over 31, 8 % of the sample reported that they have experienced verbal insults sometime in their life within their families based on their sexual orientation. Overall, 14, 4 % reported that they have experienced physical violence. 14, 4 % have been threatened with weapons sometime in their lives within the family. 20, 2% have been sexual abused by family members sometime in their lives.

### 5.1.3. Community experiences of violence

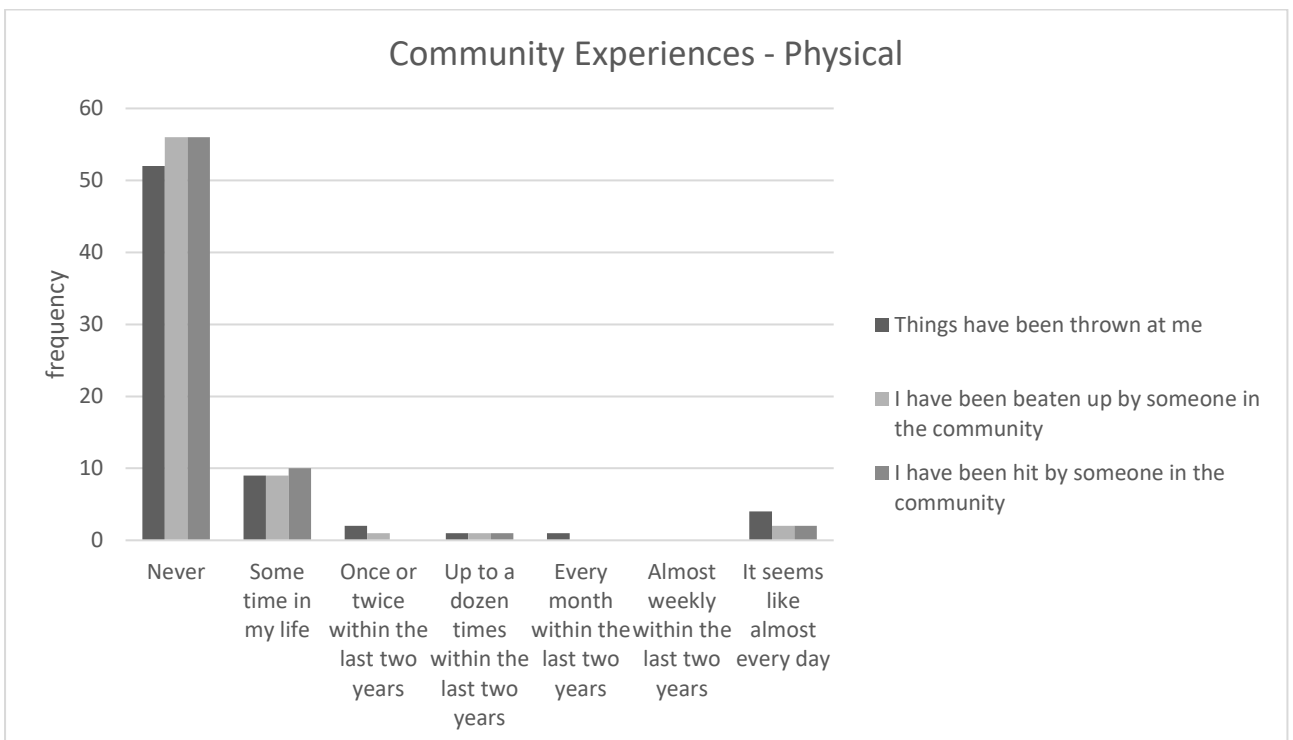
Data were obtained in a similar fashion to the previous section. These results may be seen in Table 5.3 and are represented graphically in Figures 5.6, 5.7, 5.8 and 5.9.

**Table 5. 3: Lesbian Experiences of Violence within the Community**

	Never	Some time in my life	Once or twice within the last two years	Up to a dozen times within the last two years	Every month within the last two years	Almost weekly within the last two years	It seems like almost every day
<b>Verbal Insults</b>							
I have been called nasty names	16	14	6	6	4	6	17
Comments on my appearance	17	14	6	6	3	3	20
Sexual insults	23	11	7	8	3	3	14
Insults to my family background	43	7	5	3	1	1	9
<b>Physical Experiences</b>							
Things have been thrown at me	52	9	2	1	1	0	4
I have been beaten up by someone in the community	56	9	1	1	0	0	2
I have been hit by someone in the community	56	10	0	1	0	0	2
<b>Weapons</b>							
I have been threatened with a bottle	60	5	2	0	0	1	1
I have been injured with a bottle	65	3	0	0	0	1	0
I have been threatened with stones	61	5	1	1	0	0	1
I have been injured with stones	64	3	0	1	0	0	1
I have been threatened with a knife	55	10	0	1	0	1	2
I have been stabbed with a knife	62	5	1	0	0	0	1
I have been threatened with a gun	61	4	2	1	0	0	1
I have been shot with a gun	68	0	1	0	0	0	0
<b>Sexual abuse</b>							
I have been molested	55	10	2	2	0	0	0
I have experienced forced digital penetration	61	5	2	1	0	0	0
I have been raped	55	8	5	0	0	0	1



**Figure 5. 6: Experience of verbal insults in the community.**

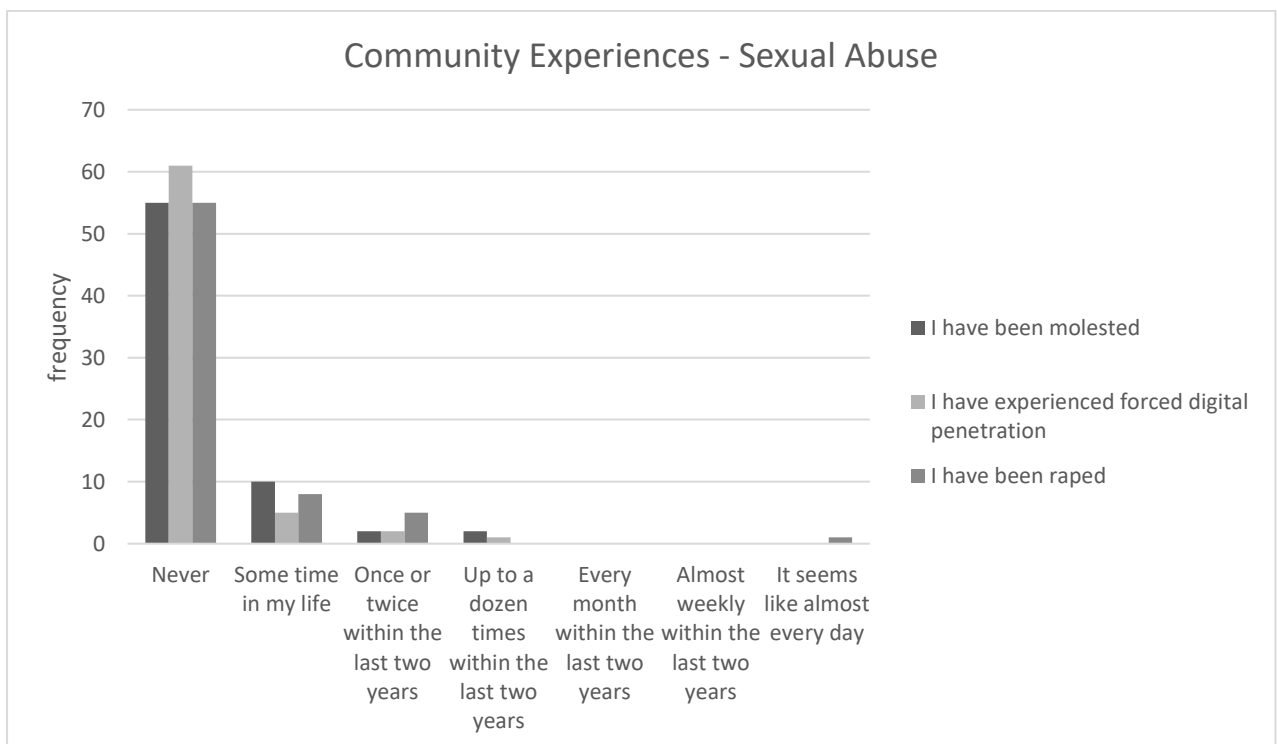


**Figure 5. 7: Experience of physical violence in the community.**





**Figure 5. 8: Experience of weapons in the community.**



**Figure 5. 9: Sexual abuse in the community.**

From Table 5.3 and Figures 5.6, 5.7, 5.8 and 5.9, it can be seen that overall 28, 9 % reported that they had experienced verbal abuse almost every day within their communities. Only 5 (7%) reported that they have experienced physical violence in their communities because of their sexual orientation. 14 (4%) reported that they have been threatened with a weapon some

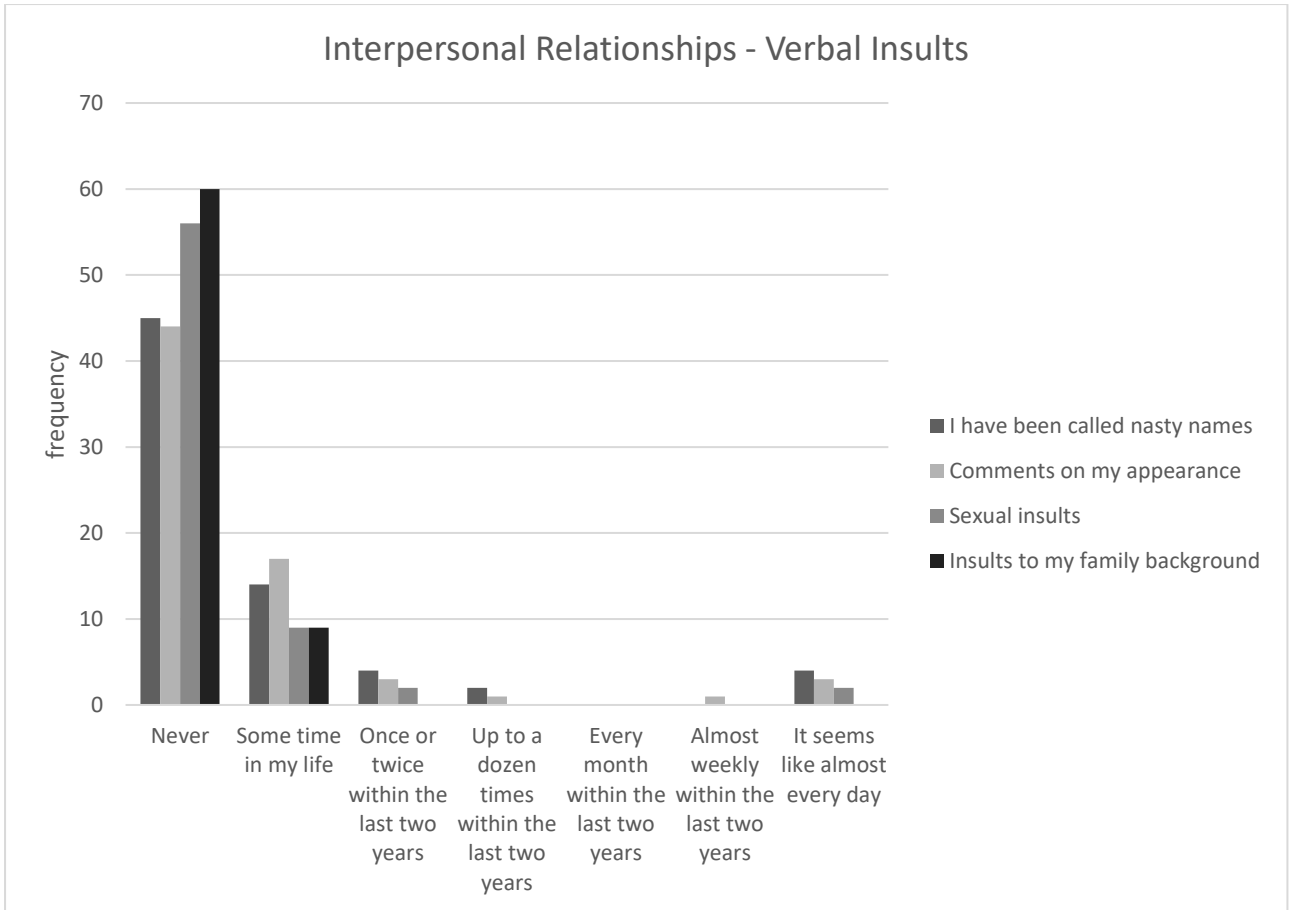
time in their lives. 14 (4 %) also reported that they were sexually abused some time in their lives.

#### 5.1.4. Lesbian experiences of violence within interpersonal relationships

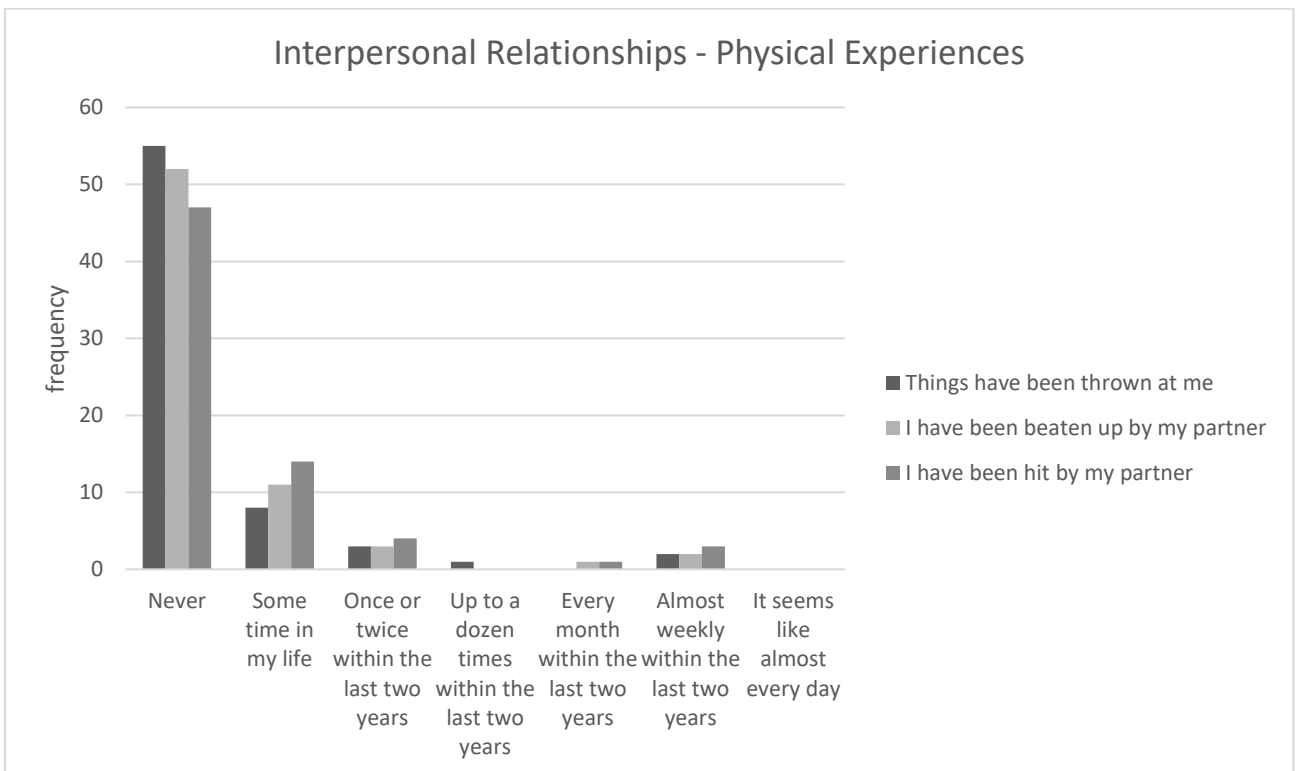
These were also analysed in the same way as the previous sections. The results may be seen in Table 4 and are represented graphically in Figures 5.10, 5.11, 5.12, and 5.13.

**Table 5. 4: Lesbian experiences of violence within interpersonal relationships**

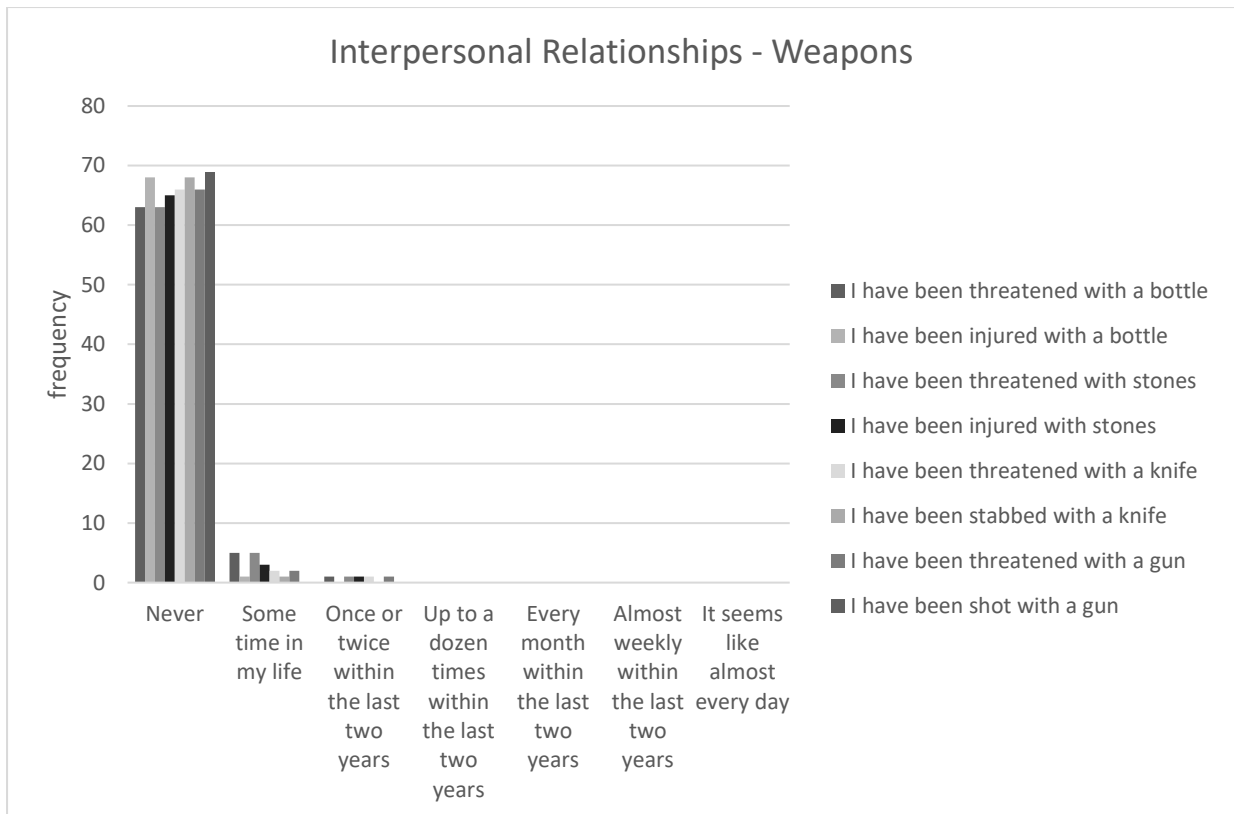
	Never	Some time in my life	Once or twice within the last two years	Up to a dozen times within the last two years	Every month within the last two years	Almost weekly within the last two years	It seems like almost every day
<b>Verbal Insults</b>							
I have been called nasty names	45	14	4	2	0	0	4
Comments on my appearance	44	17	3	1	0	1	3
Sexual insults	56	9	2	0	0	0	2
Insults to my family background	60	9	0	0	0	0	0
<b>Physical Experiences</b>							
Things have been thrown at me	55	8	3	1	0	2	0
I have been beaten up by my partner	52	11	3	0	1	2	0
I have been hit by my partner	47	14	4	0	1	3	0
<b>Weapons</b>							
I have been threatened with a bottle	63	5	1	0	0	0	0
I have been injured with a bottle	68	1	0	0	0	0	0
I have been threatened with stones	63	5	1	0	0	0	0
I have been injured with stones	65	3	1	0	0	0	0
I have been threatened with a knife	66	2	1	0	0	0	0
I have been stabbed with a knife	68	1	0	0	0	0	0
I have been threatened with a gun	66	2	1	0	0	0	0
I have been shot with a gun	69	0	0	0	0	0	0
<b>Sexual abuse</b>							
I have been molested	67	1	1	0	0	0	0
I have experienced forced digital penetration	65	4	0	0	0	0	0
I have been raped	67	1	0	1	0	0	0



**Figure 5. 10: Verbal insults in personal relationships**



**Figure 5. 11: Physical violence in personal relationships**



**Figure 5. 12: Experience of weapons in personal relationships**



**Figure 5. 13: Sexual abuse in personal relationships**

From Table 6 and Figures it can be seen that 24 (6%) of the sample reported having experienced verbal insult based on their appearance. 20 (2%) reported having experienced physical violence

within their interpersonal relationships. 7 (2%) reported that they been threatened with a weapon some time in their lives within their interpersonal relationships.

### **5.1.5. Descriptions of Experiences**

There were 66 comments on the questionnaires, meaning that almost every participant (96%) had an experience to describe.

#### ***Verbal insults***

Quantitative results revealed that 96% of respondents had an experience to describe. Almost half of the respondents reported that they had been verbally insulted and these insults ranged from being called nasty names, sexual assaults, comments about appearances and comments about their family background. Most verbal statements made by the attackers were based on judgements. For example, one respondent wrote that

*#P1 "...having being called nasty names. It is insulting to be called by nasty names due to having to be who you are. It conveys an enormous amount of ignorance and portrays how backward the society we live in is."*

Another participant reported that

*#P2 "I've been insulted by my appearances in community, mentioning things such as, not respecting myself and my identity as being a female. And things like, whether my family accepts the way I am, because what is expected from me is, to probably get married someday with a man and have a family. But that's not a life I'm comfortable living".*

In this regard, some respondents commented that they had experienced verbal insults within their families by family members. One respondent commented that

*#P3 "My aunt is homophobic, so I've experienced a lot of insults and assault from her. She called me names because of sexuality and went as far as beating me up for quite some time".*

#### ***Weapons.***

Results also revealed that respondents had been threatened and injured with weapons within their communities because of their sexuality. One respondent reported that

*#P4 “I was threatened by guys because of my sexuality threatened with stones in the community”.*

Another respondent commented that

*#P5 “In 2016 I was beaten by a guy from the community because I was lesbian. He beat me up calling me names and eventually hit me with a bottle. I was then admitted to hospital and got 6 stiches on my head from the bottle”.*

### ***Physical assaults.***

Results showed that most lesbian persons have been physically attacked some time in their lives because of their sexual orientations more especially within their families and interpersonal relationships. Respondents commented that

*#P6 “I’ve been beaten up by my father because I told him I was a lesbian and he didn’t come at peace with that, that is why we has a struggle, relationship wise been having a very abusive partner she used to hit me a lot to a point where I broke it up”.*

### ***Sexual assault.***

Similarly, the results revealed that some of the attacks were based on the respondent’s sexual orientation and perpetuated to “prove a point” that lesbians are not “real” women and they are trying to imitate men. For example, one respondent said about rape

*#P7 “I was threatened with a knife by someone outside my home accused of taking his girlfriend he said if I don’t in a car he going to kill me I faint in a car he took use to his home with the girl and he said I should do what I do to my girlfriend to him like I do to them me I refuse he then started to rape me when he was done he took me back but not at home close to home I walked home”.*

Another respondent wrote that

*#P8 “I have been sexually molested by family friend, he wanted to prove a point that I am not a real man. I was depressed for most of my life because of what he did, I was even admitted in a mental institution”.*

Taken together, these results on lesbian experiences have shown that respondents have experienced some form of violence in their lives, from family members, people they were intimate with as well as from strangers. The respondent’s perception of violence was because

of their sexual orientation or perceived sexual orientation, the way they conduct themselves as ‘males’ whereas they are females. The results also showed that respondents have experienced violence because the perpetrator wanted to prove a point. In addition results show that victimization was based on gender stereotypes, how females should express or present their gender.

(Experiences of hate crimes were separated because some participants had experienced violence in one or more setting, for instance at home or in public)

## 5.2. Attitudes towards lesbians.

The questionnaire was designed by the researcher and comprised of 22 items, 11 worded to indicate a positive attitude towards lesbians, and 11 a negative attitude. These were mixed together in a random order on the questionnaire but have been separated for the analysis as any form of ‘reverse scoring’ proved to be conceptually untenable. There were 98 UKZN student participants, 84 black, nine Indian and one white, and four classified as ‘international’ students, with males in the age range of 18 to 40 and females 18 to 32 years old. 87 were undergraduate and 11 were postgraduate students.

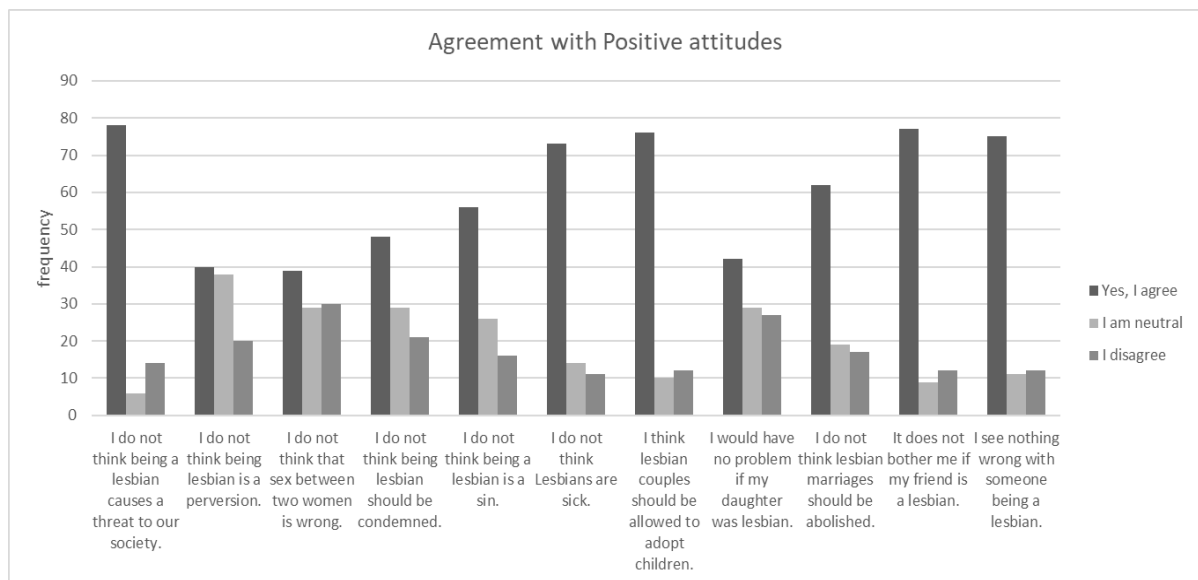
### 5.2.1. Positive Attitudes.

The positive attitudes may be seen below in Table 5.5 and are represented graphically in Figure 5.14. In all cases the ‘agree’ column represents positive attitudes and the ‘disagree’ column represents negative attitudes.

**Table 5. 5: Positive attitudes towards lesbians**

Positive Attitudes	Yes, I agree	I am neutral	I disagree
I do not think being a lesbian causes a threat to our society.	78	6	14
I do not think being lesbian is a perversion.	40	38	20
I do not think that sex between two women is wrong.	39	29	30
I do not think being lesbian should be condemned.	48	29	21
I do not think being a lesbian is a sin.	56	26	16
I do not think Lesbians are sick.	73	14	11
I think lesbian couples should be allowed to adopt children.	76	10	12
I would have no problem if my daughter was lesbian.	42	29	27
I do not think lesbian marriages should be abolished.	62	19	17

It does not bother me if my friend is a lesbian.	77	9	12
I see nothing wrong with someone being a lesbian.	75	11	12
<b>Total</b>	<b>666</b>	<b>220</b>	<b>192</b>



**Figure 5. 14: Positive attitudes towards lesbians**

Table 5.5 and Figure 5.14 summarize the classification of responses for questions exploring respondents' attitudes towards lesbian sexuality. The majority of comments under this area were positive. Questions in this domain covered general heterosexual attitudes towards lesbian persons or lesbian sexuality. It can be seen that attitudes were generally very positive towards lesbians on over half of the items show that the respondents provided positive responses with regard to lesbian sexuality. The majority of respondents (80%) reported that they do not think that being a lesbian causes a threat to society. Furthermore, 77% stated that they see nothing wrong with being a lesbian. Generally, the results of the survey revealed that the majority of the respondents did not possess negative attitudes towards lesbian persons. Regarding responses to the items which pertained to 'lesbian sexuality or being lesbian', the findings suggest that majority respondents were tolerant towards lesbian persons. Approximately 76, (77,5%) of respondents agreed with the statement "I see nothing wrong with someone being a lesbian". However, 75 (76,5 %) were neutral about whether lesbianism is a perversion (Item 21, "I do not think being lesbian is a perversion").

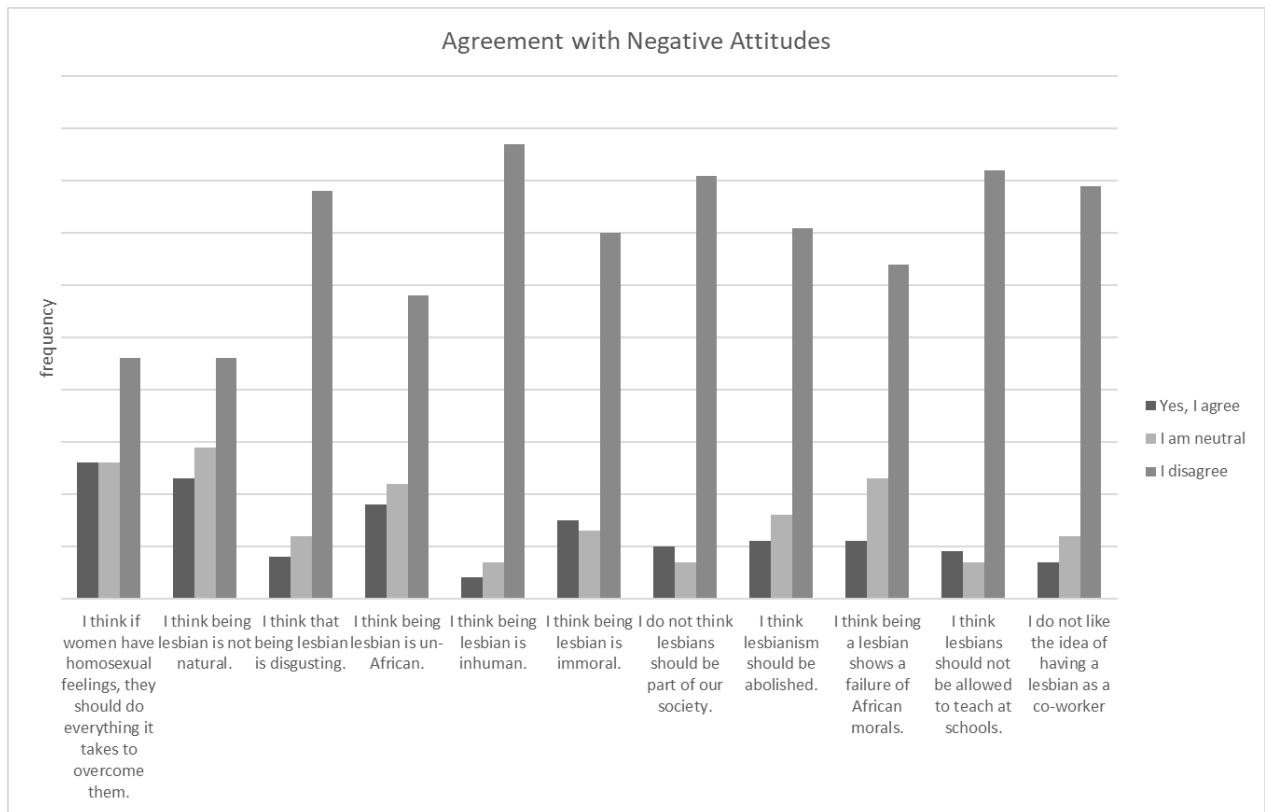


### 5.2.2. Negative attitudes

The negative attitudes may be seen below in Table 5.6 and are represented graphically in Figure 5.15. In all cases the ‘agree’ column represents negative attitudes and the ‘disagree’ column represents positive attitudes. In this section, the participant strongly disagreed with most negative statements, except for the first two statements. The disagree responses were all over 70% and in many cases over 80% percent.

**Table 5. 6: Negative attitudes towards lesbians**

<b>Negative Attitudes</b>	<b>Yes, I agree</b>	<b>I am neutral</b>	<b>I disagree</b>
I think if women have homosexual feelings, they should do everything it takes to overcome them.	26	26	46
I think being lesbian is not natural.	23	29	46
I think that being lesbian is disgusting.	8	12	78
I think being lesbian is un-African.	18	22	58
I think being lesbian is inhuman.	4	7	87
I think being lesbian is immoral.	15	13	70
I do not think lesbians should be part of our society.	10	7	81
I think lesbianism should be abolished.	11	16	71
I think being a lesbian shows a failure of African morals.	11	23	64
I think lesbians should not be allowed to teach at schools.	9	7	82
I do not like the idea of having a lesbian as a co-worker	7	12	79
<b>Totals</b>	<b>142</b>	<b>174</b>	<b>762</b>



**Figure 5. 15: Negative attitudes towards lesbians**

From Table 5.6 and Figure 5.15, as well as the table totals, it can be seen that attitudes were generally not negative towards lesbians as over 80% of the items showed that negative attitudes were very low. Items with highest percentage showing negative attitudes towards lesbian were approximately 26, 5%. Regarding homosexual feelings, respondents agreed with the item “I think if women have homosexual feelings, they should do everything it takes to overcome them”. The highest percentage showing negative attitudes were mainly about lesbianism being un-natural and un-African. 23 % agreed with item number 1, “I think being lesbian is not natural”, followed by 18 % of respondents who agreed with item number 4, “I think being a lesbian is un-African”. It can be hypothesized that most responses which showed negative attitudes towards lesbian individuals were about religion and beliefs.

### 5.2.3. Comments on the questionnaires

There were 33 comments. 3 neutral (9%), 10 negatives (30%), 20 positives (61%).

9% of the respondents were neutral and the argument was based on a religious view. For instance, one respondent commented that

*#P9 “I think my views are more based on my religious views than my views as a foreigner. I also found the question to be quite on the extreme side. In other views had to be either too against or too for”.*

This finding suggests that some of the respondents were generally tolerant toward lesbian persons.

30% of the comments were negative, mainly based on beliefs, God, Christianity and what the society perceives as natural. One respondent commented that

*#P10 “I think being a lesbian is not good thing because God did not made a lesbian. This is a think that came in our early age before they never been a lesbian”.*

Another one commented that

*#P11 “I am a Christian so based on my beliefs in Christ I think homosexuality is unnatural however they should [not] be condemned but rather we should pray for them”.*

The remaining 61% were positive comments. Positive comments mainly presented diversity in this modern time, tolerance and freedom of choices. One respondent commented that

*#P12 “...not at all I do not have any issue with lesbians, my belief is everyone has a right to be who they want, and date whoever they want irrespective of gender, colour”.*

Another one commented that

*#P13 “I don’t see anything wrong with lesbian. I believe females should freely be able to choose their sexuality, regardless of what society think. Or what their cultures dictate. Lesbians should be given the same amount of respect as heterosexuals, and their sexuality shouldn’t be a reason why they cannot have equal opportunities as everyone else. At the end of the day there should be mutual respect, and women who are lesbian should also respects the feelings of women who are heterosexuals”.*

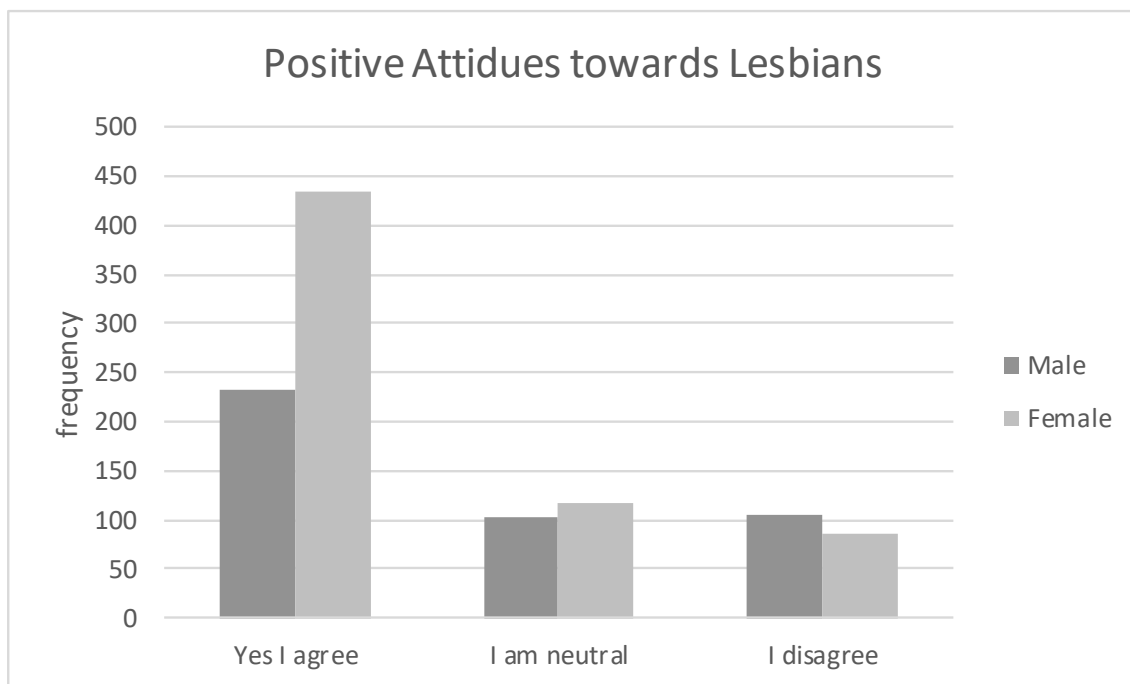
Taken together, the data on attitudes have shown that the majority of respondents had positive comments on attitudes towards lesbian person or homosexuality in general. The findings also revealed that most respondents showed tolerance towards lesbianism and homosexuality.

#### 5.2.4. Gender differences in Attitudes

While it was not part of the original research question, when capturing data the researcher noticed that there seemed to be a difference in the patterns of responses from males compared to females. The composites of the responses to the positive attitudes and negative attitudes may be seen in Tables 5.7 and 5.8 and are represented graphically in Figures 5.16 and 5.17.

**Table 5. 7: Total number of positive attitudes towards lesbians, as reflected in the ‘I agree’ row**

	Male	Female	Total
Yes, I agree	232 (34, 8%)	434 (65,2%)	666
I am neutral	102 (46,3%)	118 (53,6%)	220
I disagree	106 (55,2%)	86 (44,7%)	192

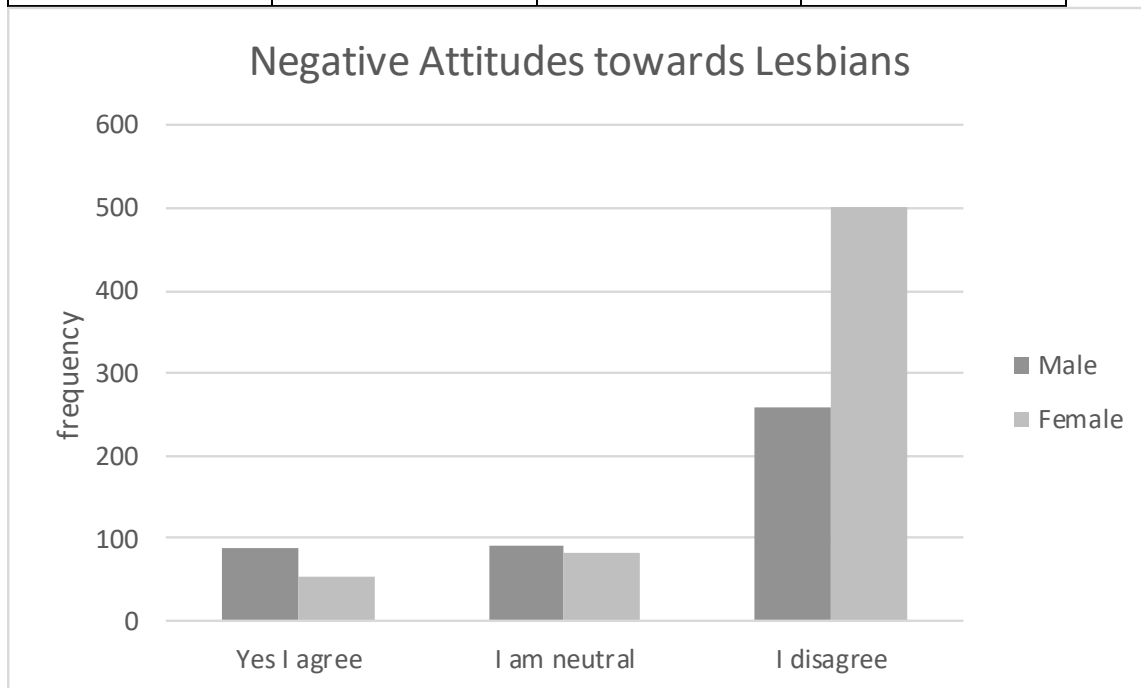


**Figure 5. 16: Total number of positive attitudes towards lesbians, as reflected in the ‘I agree’ columns**

The overall positive attitudes towards lesbians already established was once again clear, and was particularly pronounced for females, as seen by those who agreed with the positive statements. In contrast, those who were neutral or disagreed with the positive statements were a minority.

**Table 5. 8: Total number of negative attitudes towards lesbians, as reflected in the ‘I agree’ row**

	Male	Female	Total
Yes, I agree	88 (61,9%)	54 (38,0%)	142
I am neutral	92 (52,8%)	82 (47,1%)	174
I disagree	260 (34,1%)	502 (65,8%)	762



**Figure 5. 17: Total number of negative attitudes towards lesbians, as reflected in the ‘I agree’ columns**

These results were consistent with the previous figures in that support for negative attitudes and feelings of neutrality were in the minority. The high disagreement with negative statements, again markedly higher for females, confirmed the overall positive attitudes towards lesbians in the sample. Whitley & Kite (1998) substantiated this by saying that heterosexual men hold more negative attitudes towards lesbian persons and they sometimes use violence to prove the extent of their rejection of homosexuality and as a form of self-reaffirmation.

In summary, results show that in as much as attitudes towards lesbian person were mainly positive, 80% of lesbian identifying persons who were interviewed reported that they have been victims of hate crimes and have experienced discrimination in their lifetime. Results also show that lesbian sexual orientation or gender identity was the strongest predictor of experiencing

homophobic crimes or hate crime violence. Results also show that in most incidents, perpetrators were male. Through this study it was found that most lesbian self-identifying respondents had been victimized and had experienced some form of victimization in their lives mainly because of their sexual preference. Based on the study findings, lesbian self-identifying individuals are vulnerable to hate motivated crimes in the province of KwaZulu-Natal. The following chapter discusses the factors that trigger hate-motivated violence against lesbian persons.

## **CHAPTER SIX: DISCUSSION.**

### **6.1. Introduction**

Various studies have been conducted to explore lesbian experiences of hate crimes in different settings. However, a lot of attention in these studies has been dedicated to investigate hate crimes against lesbian persons in a western context. Similarly, most studies investigating heterosexual attitudes towards lesbian persons have been conducted in western countries. This particular study was devoted to exploring lesbian experiences of hate crimes in a non-western context. Exploring heterosexual persons' attitudes toward lesbian persons as a means of finding causes of hate crimes against lesbian persons in an African context. Kyes and Tumbeleka (1994) stated that different individuals may hold different attitudes towards homosexual persons, due to gender beliefs and different cultures. African countries, specifically South Africa, are generally patriarchal societies where gender roles follow a typically traditional pattern, for instance, women are supposed to obey to men and females are supposed to marry males.

The data indicated that, as in other parts of South Africa, hate crimes are a common experience for lesbian persons in KwaZulu-Natal. In the present sample, roughly 96% had an experience of hate violent crime to describe. Verbal harassment and physical abuse were more prevalent, with approximately half of respondents having experienced at least one incident hate crime violence at some time in their lives. Findings suggest that victimization of the sampled respondents appeared to be associated with psychological suffering. The reported incidents of violence seem to have caused not only physical harm to the victims but psychological harm as well – respondents have reported how victimization have caused them to be stressed and ended up isolating themselves from other people because of victimizing comments they get from people regarding their sexuality.

The study data highlighted that hate crimes against lesbian persons come in different forms and possibly manifest in various different patterns. Among the respondents' comments, attack incidents differed from one another and the location the incidents took place differed; for instance, sexual assaults sometimes were committed by a single individual and sometimes by a group of people. Violent attacks sometimes occurred in a public space and sometimes in a private space, for instance, sexual assaults occurred in a public space by a group of individuals and sometimes in a private space by one individual. The victim's relationship with the

perpetrator was also highlighted, for instance, perpetrators were sometimes known by the victims (family members, ex intimate partners or family members), and sometimes the victims did not know who they were.

Findings show that lesbians who have disclosed their sexuality or who have “come out” are at higher risk of experiencing violence based on their sexual orientation. As lesbian persons ‘come out’ to their heterosexual identifying friends, families and communities, they become confronted with prejudiced negative attitudes and different forms of violent hate crimes. Violent hate crimes varies from homophobic verbal comments to direct physical assaults. Most of these assaults are perpetrated by heterosexual friends, family members, community members, classmates and colleagues. The burdens of regular insulting comments, unfair treatment, harassment and fears of being physical attacked because of your sexuality are serious obstacles to individual growth (D’Augelli, 1992).

The high frequency of violence towards lesbian persons reflects the growing violence that is motivated by hate especially within the community setting. Thus, openly self-identifying lesbians are more likely to be harassed. Study data suggest that instances of assaults, violence and abuse provide sufficient evidence that lesbian status leads to frequent violations of personal choices, personal dignity, and freedom to pursue personal and professional goals (D’Augelli, 1992). 24,6 percent of respondents wrote that they identify as lesbian however they are still in the closet. This suggest that because of fear of being exposed to harassment and abuse few some lesbians do not want to reveal their true sexual orientation. In addition, respondents who were part of the study did not present the experiences of the entire lesbian populations under the three groups that were sampled, because most have disclosed their status or “out of the closet” due to fear of harassment. “Degree of disclosure strongly affects likelihood of harassment and discrimination, and disclosure is under personal control” (D’Augelli, 1992). Findings reported here represent lesbians who are open about their sexual status to their families and to the communities, as well as lesbians who are still in the closet (lesbians who have not come out about their sexuality). Among the sampled respondents, about 76, 8% reported that they are openly lesbian, the findings suggest that this particular sample is more vulnerable and visible targets for violent hate crimes. Findings also indicated that violence and people’s attitudes towards lesbians can be triggered by different factors such as religion, culture, age and environment.



## **6.2. Culture and religion.**

Findings suggest that social and cultural norms can stimulate violence toward lesbian individuals. Within cultural communities there are norms or expectations of gender roles and behaviors, anyone who ‘challenges’ these norms can be seen as someone who is violating culture and they often experience violence. Religion and beliefs also plays a huge role in relation to how people behave towards lesbian individuals and how they view homosexuality. In most African countries, homosexuality or same-sex sexual acts is perceived as immoral and unethical, anyone who practice same-sex relations deserves to be punished and excluded from their communities because they bring ‘shame’ to that particular religion. As such, the findings of the study revealed that young people who hold strong religious beliefs can have negative attitudes toward lesbian persons regardless of their age, gender or the environment.

## **6.3. Education, age and environment**

Previous studies have revealed that education, age and environment has a significant impact on how heterosexual people view homosexuality and attitudes they have towards homosexual persons. Youth and old people may hold different opinions and attitudes toward lesbian persons; similarly, people who are residing in urban areas and people who are residing in rural areas may hold different opinions and attitudes towards lesbian persons or homosexuality. In this particular study, findings have demonstrated that youth with higher educational qualifications hold mostly positive attitudes towards lesbian persons. This may be due to the university environment as it accommodates different and diverse sexualities. Respondents’ attitudes towards lesbian sexuality or lesbian persons were mainly positive. Positive attitudes revealed that, the majority of respondents do not think that there is anything wrong with being a lesbian or that it does not bother them if their friends were lesbian. According to Herek (1996), education and age can be dynamics that affect heterosexual person’s attitudes towards lesbian individuals. In addition, in some communities homosexuality is ‘tolerated’, mostly, it is the LGBT activists who are responsible for this tolerance as they are often raising awareness about acceptance of LGBT persons in their communities.

## **6.4. Gender variances and gender roles**

The findings revealed that female students and male students have different attitudes towards lesbian individuals. The patterns of responses from female students differs from male student responses. Different justifications have been presented for the gender variances in attitudes towards lesbian persons. Whitley, Wiederman and Wryobek (1999) discussed that males hold

less negative attitudes towards self-identifying lesbian individuals and this could be due to the sexual value they associate with lesbian sexuality. Gender differentiation reveals the belief that the nature of gender roles as constructed by the society and that people are meant to conform to their gender roles as required by the society (Arendt & de Bruin, 2006). According to the gender-role belief system perspective, males have more negative attitudes towards lesbian individuals because they have a greater value on female dependence and heterosexuality (Glick & Fiske, 1997). In addition, homosexuality is perceived as a rejection of gender roles, therefore, lesbianism presents a threat to the self-concept of men (Arendt & de Bruin, 2006).

Studies have revealed that it is possible for heterosexual men to possess more negative opinions and attitudes toward lesbian behaviour and lesbian persons compared to heterosexual females (Kite & Whitley, 1996). In this particular study, few male respondents had negative comments about lesbian persons. The few negative comments about lesbian persons were mainly about religion being against homosexuality or lesbianism, and also about lesbian persons trying to imitate men. Negative opinions and attitudes can lead to violent acts towards this population. The study results revealed that the majority of lesbian self-identifying persons have experienced violence because of their sexuality and the violence has been perpetrated by men.

Findings also reveal that negative attitudes and hate crimes against lesbian persons were more based on traditional gender role beliefs. Kite and Whitley” (1996:337) conceptualized attitudes towards homosexual persons as “...homosexuality as threat to the respondent, to people close to the respondent, and to strangers, and the management of homosexuality by means of social restrictions...”. In this regard, respondent’s experiences revealed that most of the attacks were followed by comments based on their sexuality and behaviour as a lifestyle and deviant sexual act. The results of the study showed basic variation between causes of violence towards lesbian persons and the actual incidents of hate crime incidents committed against lesbians. The results suggest that attitudes may differ from actual behaviours, people can possess negative attitudes towards lesbian persons and not act on them. In addition, hate crimes towards lesbian persons can be shaped by other external factors other than how people perceive homosexuality.

In addition, results presenting negative attitudes towards lesbian persons general suggest that there are people who are still quite old-fashioned in their understanding of gender roles and these people hold firm gender related beliefs about female roles in society. As such, most people perceive lesbians as people who are going against female gender roles. Negative

attitudes can be based on “a set of beliefs and opinions about females and about purported qualities of masculinity and femininity” (Whitley, 2002:23).

Findings also showed respondents’ belief systems about appropriate roles for females and included stereotypes and perceptions of lesbian sexuality. Therefore, being a lesbian represent a threat to society and goes against the gender roles and societal norms. Bem (1981) stated that negative attitudes towards homosexual persons are influenced by gender associated beliefs. Different studies such as that of Krulewitz and Nash (1980) have shown that negative attitudes by heterosexual persons suggest that homosexual persons are disliked because of being perceived to be nonconforming to gender roles, particularly by people who hold traditional sex-role attitudes.

### **6.5. Hate crimes**

The study data suggest that remarks made by the perpetrators which were accompanied by assaults or attacks, suggested that the victims were attacked because of their sexual orientation. Other victims stated that the crime occurred simply because the perpetrator identified that they were lesbian. Finally, the study data showed that violent hate crimes based on sexual orientation are part of many lesbian lives in KwaZulu-Natal. Such victimization may affect lesbian individuals negatively not only physically and emotionally but psychologically as well. This study did not specifically explore motives of violence toward lesbian persons. It is however of importance to note that most respondents believed that they were victimized or attacked because of their sexuality. For instance, one respondent wrote that

*#P14 “I was with my girlfriend and a guy approached us and he saw that I’m butch what straight people call a ‘tomboy’. He saw that we are together, I mean in a relationship he started calling me names like I’m a ‘wanna be man’, ‘I’m possessed and one day I’ll be straight’”.*

In this regard, findings showed that there is also a great need for psychological intervention. Victims of hate crimes require special attention different from victims of other crimes (Garnets, Herek & Levy, 1990). In particular, the study respondents perceived their sexual orientation as a cause of victimization and negative experiences.

The LGBT population has made their presence felt all around the world, the increasing visibility had made most countries aware of LGBT persons. Western countries have also played a huge role on the LGBT community visibility influencing most states to decriminalize

homosexuality. The results show that the high percentage of positive attitudes towards lesbian person's western influences coupled with societal changes have affected how people view homosexuality including lesbian sexuality. However, findings show that there is still lot that needs to be done in South African communities and Africa as a whole, to change people's attitudes towards homosexual persons and to fight against violent hate crimes towards lesbian persons. To address misconceptions and negative perceptions towards homosexual persons.

The study data highlighted that there is still a long way to go before all issues around discrimination and harassment based on sexual orientation and gender identity are resolved. If these issues are not addressed and resolved they will continue to affect lesbian individuals' lives negatively and will make it difficult for lesbians to enjoy their lives without fear of being attacked because of their sexuality. Likewise, the existence of hate crimes based on sexual orientation or gender identity not only affects the victims, physically or emotionally, but it also affects them socially and affects the victim's family and friends as well. Mostly, it makes it hard for victims and victims' families to integrate socially without being stigmatized or discriminated against. Exploring the experiences of families and friends of the victims was beyond the scope of this study; however, it is undoubtedly clear that violence towards lesbian persons has a negative impact on the quality of life of victim's friends and families.

Findings demonstrated a great need for development and implementation of strategies and policies to promote inclusion of LGBT persons within all levels of community structures to ensure protection of LGBT basic human rights. Western countries such as the United States of America have shown that hate crimes against LGBT persons can be addressed with the implementation of policies that are already existing under human rights institutions seeking to protect LGBT rights. These policies can help to reduce hate crimes against sexual minorities including lesbians, these involve strengthening and enforcing these policies at local, national and international levels. Preventing hate crimes against lesbian persons will challenge gender stereotypes and societal expectations of women such as gender conformity and will promote equality. There is a clear need for countries to prevent violent hate crimes against lesbian persons and react to the needs of the victims through government programmes, NGOs and international human rights agencies. The study data suggested a great need for raising more awareness on violent hate crimes based on sexual orientation or gender identity.

It is important to form and strengthen structures of support for victims of hate crimes and everyone who is vulnerable to hate crime. Students need to take an initiative to develop

interventions that will assist in changing negative attitudes towards sexual minorities and in shifting the principles at the higher levels of education to support all students regardless of their sexual orientation (Evans, 2000). It is essential for community settings such as schools, churches and universities to develop an environment in which lesbian population can feel safe to decide whether they want to come out and in which they are able to challenge harassment and other forms of hate crimes. Community settings should have zero tolerance towards all types of hate crimes and discrimination based on sexual orientation or gender identity. The subject of inclusivity and diversity should be emphasized regularly in community settings. Schools and universities should address diversity and inclusivity issues proactively, and there should be a code of conduct which guides addressing hate crimes or any form of violence towards lesbian persons or sexual minorities.

#### **6.6. The wider context**

Based on the results of the study and literature taken from different sources concerning hate crimes toward lesbian persons, several conclusions can be drawn. Lesbian person experience constant different forms of harassment and violence based on their sexual orientation or gender identity. “The manner in which discrimination is experienced on grounds of race or sex or religion or disability varies considerably – there is difference in difference. The commonality that unites them all is the injury to dignity imposed upon people as a consequence of their belonging to certain groups. In the case of LGBT, history and experience teach us that the scarring comes not from poverty or powerlessness, but from invisibility. It is the prohibition of the expression of love, it is the denial of full moral citizenship in society because you are what you are, and that impinges on the dignity and self-worth of a group” (Justice Albie Sachs, Constitutional Court of South Africa cited in Amnesty International, 2001:8).

The constant victimization of lesbian persons it is sometimes repeated by the same known perpetrator and often they go unnoticed and not reported to the police authorities due to fear of secondary victimization and reprisal. Victims of hate crimes often feel that they will be further victimized, humiliated and no one will believe them especially when they seek help from the authorities. Victims may blame themselves for the violence and may see themselves to be responsible, perhaps even accused of instigating violence based on their sexuality. In addition, victims of hate crimes fear secondary victimization by healthcare practitioners, and this stops them from seeking help and support. “A negative cycle is established in which victims of violence endure their pain in silence, putting them at risk for depression and other mental

illnesses as well as making them even more likely to experience a second victimization during their lifetime” (Kidd & Witten, 2008:54).

Even in countries where it is not deemed a criminal offence to be lesbian, when they use health services people perceived as being lesbian are often discriminated against and ill-treated by medical providers, reducing the likelihood that they will seek services in the future. “Refusal to treat, or treatment with gross disrespect, violation of medical privacy, private shaming and public disparagement are among the discriminatory practices and abuses that have been reported, along with hurried and inferior care” (World Health Organization, 2005:23). Such attitudes from health-care providers make many people reluctant to share personal and medical information, jeopardizing their overall health and their access to health services including those for sexual health. United Nations human rights treaty monitoring bodies emphasize both dimensions and recognize sexual orientation and gender identity as prohibited grounds for discrimination in achieving the highest attainable standard of health. Human rights standards call for the availability, accessibility, acceptability and quality of health information, including for lesbian individuals and require that all those seeking services should be treated with respect and dignity, free from discrimination (World Health Organization, 2005:25).

As part of the victimization and marginalization of lesbian individuals, states have applied discriminating laws to criminalize same-sex sexual acts. Discriminating laws that criminalize homosexuality and same-sex sexual acts can create and increase stigma and can increase violence towards lesbian persons. These discrimination laws have been used to arrest, victimize and abuse lesbian persons in public places. In this regard the International Human Rights Law has called for states to promote and protect human rights of the LGBT and sexual minority population, including respect for rights to liberty, freedom of expression, free from torture, right to privacy, free to attain highest standard of health and free from any inhuman treatment and marginalization. The International Human Rights Law has acknowledged that discrimination based on sexual orientation or gender identity, violence, stigma and any degrading treatment are often aggravated by personal factors such as race, socioeconomic status and religion among others, as such the mechanisms calls for multiple elimination of all kinds of violence towards LGBT persons. The International Human Rights Law has clearly condemned victimization of persons based on their orientation or gender identity and it has urged states to address such crimes in their regulation and bring perpetrators to justice. In addition, these laws deny lesbian persons freedom of association, limiting their access to social

services, as such in some countries lesbian individuals are forced to hide their sexual orientation or gender identity in order to be able to access certain services.

Different studies have shown that hate crimes toward lesbian persons are often perpetrated by the state and government authorities, close friends, family members, family friends, co-workers and acquaintances. Hate crimes toward lesbian persons involve sexual assaults, physical attacks, being constantly marginalised by their communities and families, and facing many other forms of brutal violence. They are targeted by men who believe and think that they should be 'corrected' using rape as a form of 'therapy'. As such, corrective rape has been one of the reported cases of victimization of lesbian persons mainly in South Africa. In other countries other forms of violence and victimization such as forced therapy are used to 'correct' lesbian persons of their sexual orientation.

Lesbian persons have been brutalized and victimized for being homosexual. They have been accused of bringing shame to their families, and transgressing cultural and gender norms by practising same-sex activity, when identifying as lesbian or being perceived as being lesbian. One of the popular justifications for victimization and marginalization of lesbian persons is that believe that women are not supposed to have sexual relations with other women. It is viewed as an unacceptable thing and whoever is found to be engaging themselves in such act should be punished. Often perpetrators of violence argue that they are doing the victim a favour by teaching her how to act like a 'proper women'. Very often hate crimes related to sexual orientation remain unpunished because of the beliefs and cultural norms and at times they are even endorsed by the law. Such crimes violate basic lesbian human rights, rights to privacy, rights to life, rights to equality before the law, and rights to equal protection by the law. Few states have tried to reform laws to accommodate sexual minority populations and to reflect some of these human rights principles, but some countries have tightened their laws to criminalize same-sex sexual relations.

In addition, the literature used in this study has revealed that victimization of lesbian persons takes place in different settings such as schools, churches and in general public settings. Lesbian individuals experience discriminating violence in healthcare settings, verbal abuse, public humiliation, denial of treatment are among documented violence toward lesbian individuals by the health workers. Statistics suggest that such victimization can cause mental harm and contribute to stigma. Not only are lesbian persons facing oppression and victimized but in some countries they are even expelled from schools, removed in churches and so forth.

Sometimes lesbian persons do not report victimization in these settings because they fear continued harassment, fear of being humiliated and fear of disclosing. It is however, difficult to estimate the exact amount of hate crimes toward lesbian persons as few states have systems to investigate, record and report incidents of hate crimes, even in states where this system exists, many incidents of hate crimes are not reported because victims are stigmatized or afraid of the perpetrators.

Violence related to sexual orientation or gender identity serves as a form of control and punishment, committed by states, agency of the state or co-workers, with the purpose of bringing shame and diminishing the character of the victim of violence (Lamble, 2013). Shame, humiliation, stigmatization and guilt contribute to making it difficult for lesbian persons to report incidents of hate crimes, and to seek treatment and care for the related injuries, further exposing them to health problems (World Health Organization, 2015:359). Violence, including verbal attacks and physical attacks, is a violation of fundamental human rights, particularly; rights to life, to be free from torture and inhuman and degrading treatment, to the highest attainable standard of health, and to bodily integrity, dignity and self-determination (United Nations High Commissioner for Human Rights, 2001).

Culture and religious norms were found to be a possible motive for violence and discrimination of lesbian individuals. Religion and culture together with medical services are often used to oppress lesbian persons, forcing or attempting to change lesbian persons or their sexuality and become “straight” or heterosexual. A lot of justifications are used to justify oppression and victimization of lesbian persons such as that it is un-Christian, un-African and a white disease. Cong & Wu (1998) explained that individual identity development is dictated by the principles of the larger society’s value, and, as such, sexual minorities are marked as abnormal. On that note lesbian persons are therefore oppressed and victimised because they challenge gender expectation and social beliefs and it is assumed that they want to take on male entitlement and such acts should be punished. Ultimately, lesbian persons are seen as a threat to the social order (Amnesty International, 2001). Due to perceived gender-nonconformity, all over the world lesbian persons are stigmatized and discriminated against, and often experience high levels of violence from police, gangs, family members, health-care providers and others (Hunter, 2007). Stigmatization, discrimination, and legal, economic and social marginalization and exclusion impede their access to necessities such as appropriate and good quality health care, social welfare, housing, education and employment (World Health Organizations, 2005).



Socioeconomic status was also found to be partly a cause for the vulnerability of lesbian persons to hate crimes, as lesbian individuals who are from disadvantaged communities have limited access to support services such as healthcare to seek help. In addition, lesbian individuals who are from low income countries are more likely not to seek help or report incidence of hate crimes, which places them at a higher risk of further victimization. Due to unemployment and financial constraints, victims may not afford to access health facilities or report cases of victimizations because of the processes and channels they need to go through which may need to be paid for. In countries where homosexuality is illegal, lesbian persons may not be able to access government health facilities, and may be required to consult private facilities which may need to be paid for, as such they will have no choice but not to report the victimization incident.

Although people's attitudes towards lesbian persons and towards homosexuality are slowly changing, violent hate crimes based on sexual orientation are still prevalent, especially in countries that are economically disadvantaged. Whilst there were few reported severe acts of violent attacks during the study, verbal insults were more common and prevalent violence reported. These findings also suggest that violent hate crimes directed to lesbian persons have created a climate which hinders lesbian persons from living their lives openly and disclosing their sexual orientation to their families. Therefore, experiences shared by the study respondents revealed that lesbian persons are still marginalized and not accepted. The study data do not cover the full scope of potential attitudes toward lesbian persons. However, findings suggested that specific attitudes towards lesbian persons can become a motivation for violence toward homosexual persons.

In this context, the South African Constitution is one of the most recognized constitutions in the world with regards to sexual rights of LGBT population. However, the findings showed that there is a lack of practice and ensuring that these rights are promoted. As a result, lesbian individuals may be aware of the constitution but they may not be aware of how it communicates to their human rights. This clearly shows that there is a lack of awareness and promotion of lesbian rights or sexual minorities and not much has been done to address violence based on sexual orientation or gender identity especially in economically disadvantaged communities. Victimization of lesbian persons based on their sexual orientation robs them their voice to speak out and prevents lesbian individuals to seek justice (Dworkins & Yi, 2003).

On the other hand, findings of this study suggest that the South African government and the international community has failed to protect sexual minority population including lesbian individuals from violence and discrimination. Arendt & de Bruin (2006), demonstrated that the South African constitution has failed the LGBT population because it has failed to reduce the high levels of reported hate crimes against lesbian individuals and violence against lesbian individuals is still continuing. The South African constitution prohibits violence based on sexual orientation and in that order provides detailed guidelines for addressing hate crimes or discrimination based on sexual orientation or gender identity, to also address related grievances, however it has failed to implement these policies in a practical way. It is clear that government has neglected its duties to ensure equality and promote human rights of every individual despite their sexual orientation or gender identity. In particular, it has failed to address hate crimes based on sexual orientation or gender identity and to enforce non-discrimination policies on bases of sexual orientation and gender identity effectively. As a result, studies show that hate crime incidents are highly under-reported because the use of these guidelines have little impact if any at all. In addition, discrimination based on sexual orientation or gender identity means limited access to support units for the LGBT population, and may affect academic performance. Eliminating discrimination based on sexual orientation or gender identity may increase academic performance and can improve access to support systems around the campus and around communities.

The large number of reported hate crimes toward lesbian persons suggests that violence directed at this population should be investigated further and included in hate crime statistics throughout the world to demonstrate the extent to which lesbian rights are violated. Moreover, accurate statistics on hate crimes towards lesbian persons should be collected and published. Findings of this study also suggest a great need for further research of the causes of hate crimes toward lesbian persons, as well a need of how lesbian individuals can be protected from hate crimes. In addition, more research needs to re-examine how government can promote lesbian rights and how support facilities can be accessible to victims of hate crime. Government, LGBT activists and researchers should pay more attention on factors that may cause further victimization or discrimination, such as socioeconomic status. The persistent and ongoing lack of social and legal attention on violence against lesbian population requires attention from the international agencies such as the United Nations and Human Rights Watch.

Different forms of sexual and sexuality-related violence are violations of human rights. In accordance with human rights standards, states must adopt legislative, administrative, social,

economic and other measures necessary to prevent, investigate and punish acts of violence including all forms of sexual violence, whether perpetrated by the state or by private persons, and they must provide support and assistance to the victims of violence, including access to health services. States should also provide effective remedies, compensation and mechanisms for seeking redress. This obligation applies with respect to all persons, regardless of their sex, gender, age, sexual orientation, gender identity, marital or other status, and irrespective of who it was that committed violence against them, in whatever context. Laws can play an important role in fostering the recognition of all forms of violence as a human rights violation and a crime. They can be crucial in setting guarantees and frameworks for government actions to prevent, eliminate and deal with the consequences of violence, and a number of countries in different regions have developed laws in line with these human rights standards.

South Africa is a diverse country. Therefore, it is important to celebrate its reach diversity, meaning everyone should be treated equally with respect and dignity. To respect expression of gender diversities, to encourage societal acceptance. Change will not be accomplished overnight, but it will require a long process, resistance and persistency. Studies with knowledge about gender and sexuality diversity can be used to promote acceptance of different sexualities. However, there is a lot that needs to be done to fight against victimization and discrimination of lesbian person, for instance conferences that will help to educate people about sexual diversity mostly in African countries. Everyone is equal whether they are attracted to the same-sex or opposite sex, therefore, they deserve to be treated with respect and dignity.

South Africa already has in place many laws and policies to address sexual violence and discrimination. What is solely lacking is effective implementation of those provision. It is incumbent upon the South African government to take immediate steps to honour its promise of equality, non-discrimination, and a life of dignity for lesbian women failing to do so betrays the Constitution, violating the rights of South Africans citizens. Those who are responsible for perpetrating violence against lesbian individuals in particular and LGBT persons in general and also violating their rights sometimes face a strong affirmation from the judiciaries. Henceforward, it is everyone's duty and responsibility to work for justice, agitate for rights and freedom as that is the purpose of the law.

Under the international and regional human rights law, states are responsible and required to protect all citizens from any form of violence regardless of their sexual orientation and gender identity. In line with the human rights concept of "due diligence", which applies to all persons,

states must adopt legislative, administrative, social and economic measures necessary to prevent, investigate and punish acts of violence including sexual assaults, physical assaults, homophobic violence, whether perpetrated by individuals or by the State (World Health Organization, 2015:364). States are responsible for providing effective methods for addressing cases of hate crimes and compensation of hate crime survivors or victims.

In line with human rights standards, states must ensure that the training of doctors and other health and medical personnel meets appropriate standards of education, skill and ethical codes of conduct (World Health Organizations, 2009). Eliminating discrimination in access to health services- laws which preclude anyone's access to needed health services violate human rights (World Health Organization, 2015:18). "For people working in public health and concerned about sexual health in particular, it is essential to understand the impact of certain laws on health broadly and on sexual health in particular, and to understand how human rights standards can be used to ensure supportive laws and thus improve health" (Thoreson, 2014:830). Health care providers who are inadequately trained are not able to provide appropriate health services. Specific training is needed, especially in the area of counselling related to sexuality and more generally for dealing with many different kinds of patients with a non-judgmental and respectful attitude, with sensitivity to gender and human rights dimensions" (World Health Organization 2015:19).

The International Human Rights Law should recognise sexual minority or LGBT rights as essential privacy rights and as part of the non-discrimination principle. The International Human Rights agencies should challenge States that have criminalised homosexuality to decriminalise homosexuality in African states and protect LGBT persons. Together with LGBT human rights advocacy, the human rights mechanisms should work together to fight and prevent discriminating laws and penalties imposed on LGBT acts.

There are states mostly from the western continents such as Australia who have provided required laws for addressing crimes based on one's sexual orientation or gender identity and have included hate crimes committed against LGBT individuals in their hate crime bills. The United Nations has strongly recommended that all states members should review hate crime laws to address violence and to prevent LGBT human rights violations within their jurisdictions. The United Nations further recommends that States should establish anti-discrimination laws to protect and promote the essential principles of equality of persons of diverse sexualities including sexual orientation or gender identity. Similarly, International

Human Rights Agencies have urged States to adopt laws and public guidelines against violence and discrimination based on sexual orientation or gender identity. They have called States to develop appropriate measures to ensure that individuals who are detained are protected against victimization and discrimination based on their sexual orientation or gender identity.

States should protect and advocate for the decriminalization and acceptance of same-sex relations. Human rights defenders and organizations should challenge laws and policies that oppress lesbian people. States are responsible for ensuring that health services are available, and accessible to every citizen, in public sectors and private sectors. Accessing health care services involves removing direct and indirect legal and policy barriers such as constraints on necessary treatment; requires criminalization of sexual minority health services and medical procedures (World Health Organization, 2005). Access to quality care must also be guaranteed through appropriate training of health-care providers, through the safeguarding of privacy, confidentiality and informed decision-making, and by ensuring adequate supplies of good quality medicines and up-to-date equipment (World Health Organization, 2005:29).

The primary aim for LGBT rights activism should be to fight against the perception that homosexuality is ‘un-African’ (Ibrahim, 2015). The International Human Right Law should be enforced to prevent discriminating laws that are imposed to ban homosexuality and punish homosexual persons. Subsequently, the international community especially States that have decriminalised homosexuality, should work together to protect lesbian individuals and to get African countries to decriminalise homosexuality. Indigenous LGBT organizations together with religious leaders and activist should work together in fighting and promoting LGBT rights in African countries.

## **6.7. Limitations of the study.**

As the study progressed, quite a number of challenges arose and proved to be limitations of the study. Most limitations were dictated by participant recruitment and interest from the study respondents. For instance, there was not diversity with respect to ethnicity of respondents. Since the study had two foci, limitations will be discussed separately.

### **6.7.1. Exploring hate crimes against lesbian persons:**

The researcher found it difficult to get the participants to trust her with their private and personal information. As someone who identifies as lesbian and to some respondents she was still a stranger and it was also difficult for the respondents to share their experiences with

someone who identified as them, maybe they feared judgment. Another challenge that was encountered was that participants were unsure about revealing their identities. In addition, the study questionnaires did not allow analysis of the aftermath of victimization and did not allow the respondents to state specifically where the attack took place, for instance, on campus for those who were students, or at work for those who were employed. The structure of the study was only provided in English. Due to this an illiterate individual may have struggled to respond to the questions, however efforts were made to explain questionnaires to the respondents in Zulu.

### **6.7.2. Exploring attitudes toward lesbian persons:**

Regarding this part of the study, not many participants filled in the opinions and comments section, as it was provided at the back of a questionnaire. This part of the study did not capture information about whether the respondents had had a previous interaction with lesbian persons. Furthermore, the study did not focus on the effects of other characteristics such as religion, ethnicity and age on individual's attitudes towards lesbian persons. The main aim of this section of the research was to also involve all races as part of the study. However, it was difficult to recruit racially diverse students to participate in the study, the result being that there were mainly black respondents. Most students of colour were uncomfortable with the questions about attitudes towards lesbian persons. The sampled respondents being students would not represent the overall population of KwaZulu-Natal. Herek (2000) stated that university students may be open-minded about issues around homosexuality, therefore the degree of incidents of hate crimes may be underestimated.

In conclusion, that social cultural norms and religion play a huge role in how people view or understand homosexuality. Furthermore, social cultural norms and expectations of gender roles can stimulate violence towards people who do not conform to social cultural norms. The data offered here suggest that hate crimes in the province of KwaZulu-Natal are high and require serious intervention.

## **CHAPTER SEVEN: CONCLUSION AND RECOMMENDATIONS**

The main goal of this study was to explore lesbian experiences of hate crimes and attitudes towards lesbians. The general finding was that 96% of the lesbians surveyed indicated some experience of hate crime in the form of verbal or physical violence from their families communities or personal relationships, and that the majority of attitudes towards lesbians were positive, with the negative attitudes being rooted in religion and unnatural or ‘un-African’ perceptions. The study recommendations therefore represent the views of all those who have been affected by hate crimes. A lot of work needs to be done in educating people to be able to recognize crimes that are motivated by hate. Addressing issues around discrimination based on sexual orientation can generate tolerance and acceptance of sexual diversities.

These recommendations are not limited to any specific population but they represent the regularly instances of experience shared by the study respondents from all kinds of backgrounds. The implementation of these recommendations can assist in providing more effective and appropriate services for victims of hate crimes from a local and international perspective. Addressing hate crimes is not just a police or victim issue. It requires everyone to sustain public safety and the well-being of every citizen.

### **7.1. The international and community structures**

States should decriminalize homosexuality or same-sex sexual acts in order to fight against the victimization of LGBT people. Laws that criminalize homosexuality should be removed. Violence and hate crimes against lesbian persons should be recognized as a violation of International Human Rights Law. Access to information relating to homosexuality is important to empower people to promote acceptance and tolerance of sexual diversities. Education is also crucial in addressing violence based on sexual orientation and gender identity or any violence towards lesbian persons, and in promoting inclusivity and the acceptance of other people’s life choices. Literature has shown that access to educational information that provides knowledge about different sexualities can produce positive outcome for societies in general and can change people’s attitudes toward homosexuality. Nevertheless, community awareness campaigns are essential to challenge misconceptions about gender roles, leading to victimization of lesbian individuals, and to address acts of violence and discrimination of lesbian individuals. These campaigns should be held in public settings such as schools, churches and community halls since this is where most of lesbian victimization take place.

Community structures, local organizations and leaders should be able to fight against hate crimes toward lesbian individuals, they should encourage the unacceptability of violence. Community outreaches are needed with the traditional leaders and people who are working with the communities; for instance, teachers, pastors and nurses should be sensitized and educated about anti-gay hate crimes. Awareness campaigns on issues around hate crime should be regularly done especially in communities that are economically disadvantaged, they should be designed to address any form of hate crime. Community discussions on fighting against hate crimes should represent victims from all the ethnic groups and all the genders. Community members should be encouraged to report incidence of hate crimes when they have witnessed it.

Universities, schools and churches should penalize any act prejudice victimization and should include sexual orientation in their policies. To address the issue of violence perpetrated against sexual minorities, Churches, schools, universities, and so on should implement policies and monitoring programmes which include addressing discrimination or harassment based on sexual orientation or gender identity as well as establishing sanctions against perpetrators. The youth in schools and around communities should be educated about anti-gay hate crimes. Schools should foster acceptance and appreciation of sexual diversity, to help reduce hate crime victimization. Schools and churches should adopt anti-discrimination policies to help fight against anti-gay hate crimes. Social sanctions should be appropriately implemented against people who perpetrate any sort of violence against lesbian persons.

A person's safety should be of priority to the state regardless of her or his sexual orientation or gender identity. Violence against lesbian persons should be addressed in all its manifestations. Everyone should be protected from discrimination based on their sexual orientation or gender identity, in housing, employment, and health care services. States should take actions to address discrimination and violence against lesbian individuals through economic empowerment methods and education empowerment programmes. States should provide funding for organizations seeking to fight against hate crimes. States should ensure that community organizations which seek to address issues such as hate crime, are supported financially to carry out their duties. In addition, for all the communities who already have programmes which are seeking to address and prevent hate crimes directed at LGBT persons, more studies should be conducted on assessing the effectiveness of these programmes. Hate crime cases should be documented appropriately and reported to the police, and more systematic studies of hate crimes against lesbian persons.



States should provide a special team to investigate hate crimes, and establish support units for victims of hate crimes. It should also identify hate crimes against sexual minorities as intolerable and establish more severe punishments for hate crime perpetrators. This means perpetrators or offenders of hate crimes should be held accountable and punished. States should develop and implement a strong national structure to respond to hate crimes towards LGBT persons. Every State should have a special commission to address violent hate crimes, investigate and prosecute perpetrators of hate crimes should be established within every its jurisdiction. Communities should have access to information that speaks about violence and hate crime, and should be educated about channels that assist in accessing support services. There should be no restrictions to reporting hate crimes, laws should be implemented in a way that is accessible by everyone without any distinction.

Within the United Nations framework, violence based on one's sexual orientation or gender identity should be regarded as violation of international human rights. The international bodies should recognize any form of violence against lesbian women as a violation of human rights and should intervene to provide security for the victims of hate crimes. International bodies should assist and monitor States in implementing relevant plan of actions aiming to fight against hate crimes and protective measures for hate crimes victims. The United Nations should provide all member states with guidelines and policies to assist in fighting against hate crimes and promoting human rights. The United Nations should also assist in developing guidelines and principles for member states which will promote and protect LGBT rights in the context of hate crimes. States should collaborate with relevant agencies to investigate and share experiences of hate crimes toward lesbian individuals and ensure that appropriate mechanisms are provided to protect human rights violations in this context at the local, national and international level.

States should assess public health service laws and ensure that they are accommodative to victims of hate crimes. States should implement or strengthen the existing anti-discrimination laws to protect LGBT individuals. Countries are obligated to provide support services to organizations to educate people about preventing hate crimes; organizations which provide legal services to victims and organizations which educate people about their rights. It should work together with NGOs and communities to promote a supportive and safe environment for LGBT population. States should ensure that private and government sectors develop and implement codes of conduct concerning issues of hate crimes, the code of conduct should interpret human rights principles. States should ensure investigation and implementation

mechanisms to guarantee the protection of lesbian persons from violence based on sexual orientation human rights, including their families.

## **7.2. Services for victims of hate crimes.**

To assist victims of hate crimes, appropriate psychological help should be provided. Anderson (1982) noted that victimization of hate crimes and its aftermath can lower self-esteem significantly and induce strong feelings of shame, guilt and depression in the survivors. Sustainable and suitable support is crucial to assist victims of hate crimes deal with the after effects of violence; for instances, hate crime crisis centres and help-lines, counselling and health services. Health professionals and social service providers should be trained to assist survivors and victims of hate crimes appropriately and to provide required assistance to hate crime survivors attentively.

Government should provide training for social service departments and health professionals to help address the hate crime survivors and to encourage hate crime victims to report victimization. Government should also implement strategies and safe institutions to assist victims of hate crimes and should educate the staff to be able to handle such cases appropriately. To protect victims of hate crimes, confidentiality should be of main priority to the social service providers and health professionals. In addition, lesbian individuals should not ignore their rights. They should not tolerate discrimination from the police authorities. Lesbian persons should take the initiative to educate themselves about the Law and the Constitution, and they should be able to know which channels to follow when they want to report hate crimes or any other crime based on their sexual orientation and gender identity.

## **7.3. Higher education.**

In order to challenge marginalizing attitudes and hate crimes toward lesbian persons, homophobia should be addressed in higher learning institutions. Higher learning institutes should provide an environment that is safe and accepting of non-heterosexual students. Staff including administrators and lecturers should be educated and trained to promote and equally apply basic human rights amongst students. Staff should be educated about challenges that are faced by non-heterosexual students. Issues around sexual orientation should be part of staff training to help create a safe environment where discrimination is not tolerated. Universities should raise awareness about issues concerning violence and discrimination against sexual minorities and promote inclusivity. They should provide support and a positive climate for the LGBT population, as improving support for this population may improve their academic

performance and psychological well-being. University officials should work together to improve the campus environment for lesbian individuals and all sexual minority groups. This will help other students who are struggling to disclose their sexual status because of fear of being harassed. Staff should be trained to speak against anti-gay victimization and, most importantly, be able to recognize anti-gay hate crimes.

Implementation of LGBT support policies in universities can improve relationships amongst the LGBT population, heterosexual students, university employees and lecturers. Issues around homosexuality should be incorporated and discussed in the lectures and outside the lectures. Universities should develop formal policies communicating zero tolerance to hate crimes toward any student regardless of their sexual orientation or gender identity. Universities should have LGBT supportive policies to reduce incidents of discrimination based on sexual orientation. Programmes on homosexual issues, including subjects of issues around homosexuality in the existing courses can assist in promoting positive attitudes towards lesbian persons. Higher learning institutes should raise awareness on issues around diversity and issues around violence based on sexual orientation or gender identity.

In addition, student organizations should demonstrate zero tolerance of hate crimes or any discrimination towards sexual minorities and should assist in creating a safe space for lesbian identifying students. Student organizations can prevent possible negative attitudes towards lesbian persons by implementing and developing policies of equality and other social changes within universities. Lesbian identifying students should be able to access support units without fear of being judged. Violence directed at lesbian students should not be tolerated and perpetrators of hate crimes should be penalized.

#### **7.4. Criminal justice personnel and the use of law.**

Criminal Law is used to prevent, prosecute and punish illegal behaviours, and to protect human violations through the legal system. However, in this context many countries apply criminal law to punish homosexuality and to prohibit access to social services such as justice system and health care services. Criminalization of homosexuality has many negative consequences for LGBT individuals, it hinders LGBT individuals to report cases of hate crimes to the police authorities. To appropriately attend to the needs of survivors of anti-gay hate crimes appropriately, it is necessary to sensitize all levels of the criminal justice system, including judges, district attorneys and police officer. Professional programmes and discussions about hate crimes should be established to help sensitize legal departments to assist in identifying

and reporting anti-gay hate crimes. Educational programmes about hate crimes towards lesbian persons can assist Police officers, judges and attorneys to be able to work or interact with their LGBT colleagues. It should be mandatory for the criminal justice system to be part of anti-gay hate crimes outreach or parades to understand the LGBT culture, this can assist in reducing police secondary victimization. Police officers and the criminal justice agencies should work together on establishing a relationship of trust with the LGBT population in order to get them to report incidents of hate crime so justice can be served.

Given the amount of hate crime incidents that are not reported as well as obstacles which exist when victims seek justice, law enforcers and police officers should be trained and this should be a priority to be able to address cases of hate crimes. For effective service delivery, criminal justice personnel need to understand the nature of all forms of harassment which may lead to serious hate crimes, to consider hate crime incidents of priority, this would show victims that they are supported and make them feel less vulnerable. Hate crimes toward lesbian persons should be recognized as serious crimes and should be of main priority for the justice system and the police. Police officers and criminal justice system should make sure that all perpetrators of violence are brought to justice.

#### **7.5. Government and States.**

The State and Government have an obligation to protect every citizens as provided by the Constitution. States should eliminating barriers in access to services such as health facilities and criminal justice, provide laws, information and services that will assist in fighting against discrimination on bases of sexual orientation or gender identity. Government should allocate necessary resources to assist survivors of hate crimes.

Necessary resources to support victims and investigate hate crimes should be allocated, as well as providing adequate training for the police units dealing with such cases. Government should implement public strategies to educate citizens about sexual diversities, hate crimes and the aftermath of violent hate crimes. Government should provide other reporting mechanisms other than through the police department, for instance, through local libraries and through churches, people working in these places should be well trained to address incidents of hate crimes.

Anti-discriminating interventions should be of high priority to government to assess hate crimes against LGBT individuals in public and private spaces. Government institutions should be trained to assist and address LGBT issues in a way that is not discriminative toward this population, for instance health care workers should be able to provide appropriate health care

to LGBT persons, and this will also assist in reducing transmission of diseases such as HIV. The South African government must sustain the Constitution's prohibition of discrimination based on the person's sexual orientation or gender identity by addressing the rising amount of violence against lesbian persons. Government institutions at all levels should educate communities and citizens on how to exercise and protect their rights; as well as to apply constitutional laws. States should provide funding for programmes which seek to educate communities about anti-gay hate crimes, and programmes which seek to fight against anti-gay hate crimes.

#### **7.6. Non-Governmental Organizations (NGOs).**

NGOs function independently from government and they mainly seek to address social and political matters at a local, national and international level. NGOs can develop and implement educational mechanisms for addressing hate crimes against lesbian persons or any other human being. NGOs can implement advocacy activities to raise awareness against hate crimes, these activities should highlight challenges which may hinder lesbian persons to seek help justice. They should assist to monitor and report incidents of hate crimes and any act of violence against lesbian persons at local, national and international levels. NGOs should work with the state's government and international human rights institutions to promote the human rights of victims of hate crimes within the United Nations policy framework and the International Human Rights Law.

NGOs working or seeking to promote and protect LGBT rights should be sensitized about addressing hate crimes based on sexual orientation and be educated about topics relating to sexuality and promotion of sexual minority rights. Intervention is essential at an earlier stage to help victims before incidents of hate crimes worsen. Organizations should have knowledge about addressing and reporting hate crimes and they should simplify the reporting process. Engaging with government departments, social groups and communities to develop relevant support for victims of hate crimes and effectively address hate crimes.

Organizations founded by LGBT persons should create a safe space for LGBT persons, create social inclusion and better access to health facilities. Development of educational activities to address and prevent hate crimes and any issues relating to this phenomena is essential. Raising awareness at the local level to the national level, about hate crimes and obstacles which hinder victims from reporting hate crime incidents and seeking justice from the police should be of importance. NGOs should design mechanisms that will monitor incidents of hate crimes,

monitor reporting of hate crimes and any form of violence towards lesbian persons, and assist police authorities bring perpetrators of hate crimes to justice.

### **7.8. Conclusion**

South Africa has one of the most liberal Constitutions in the world. In theory this should be offering the same human rights and protection to all minorities including lesbian persons. This study has shown that despite all of this, lesbian persons still experience hate crimes in the form of verbal and physical violence within their families and communities, and in their personal relationships. This study did not establish a high incidence of negative attitudes towards lesbians, and what negative attitudes there were clustered around beliefs of lesbianism being un-Christian, immoral, and un-African. The way forward in the proposed recommendations would lead to a society which is free, fair, and just for all.

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## APPENDIX A: ETHICAL CLEARANCE



08 August 2018

**Ms Nandi M Makhaya 212559498**  
School of Social Sciences  
Pietermaritzburg Campus

Dear Ms Makhaya

**Reference number: H55/2261/017M**

**Project title: Hate crimes perpetrated against Lesbian Women and their Personal experiences of Violence in Family and Community Settings.**

### **Full Approval – Full Committee Reviewed Application**

With regards to your response received on 02 August 2018 to our letter of 01 August 2018, the Humanities and Social Sciences Research Ethics Committee has considered the abovementioned application and the protocol have been granted **FULL APPROVAL**.

**Any alteration/s to the approved research protocol (i.e. Questionnaire/Interview Schedule, Informed Consent Form, Title of the Project, Location of the Study, Research Approach and Methods) MUST be reviewed and approved through the amendment/modification prior to its implementation. In case you have further queries, please quote the above reference number.**

**Please note: Research data should be securely stored in the discipline/department for a period of 5 years.**

**The ethical clearance certificate is only valid for a period of 3 years from the date of issue. Thereafter Recertification must be applied for on an annual basis.**

I take this opportunity of wishing you everything of the best with your study.

Yours faithfully

Prof S Singh (Chair)





/px

cc Supervisor: Dr Nelson Louw  
cc Academic Leader Research: Prof Maheshvari Naidu  
cc School Administrator: Ms Nancy Mudau

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Humanities & Social Sciences Research Ethics Committee  
Professor Ghonuka Singh (Chair)/Dr Shamala Naidoo (Deputy Chair)  
Westville Campus, Geyan Mbeki Building  
Postal Address: Private Bag 954001, Durban 4001  
Telephone: +27 (0)31 260 2567/260 2567 Facsimile: +27 (0)31 260 4826 Email: [smb@ukzn.ac.za](mailto:smb@ukzn.ac.za) / [shn@ukzn.ac.za](mailto:shn@ukzn.ac.za) / [mahuna@ukzn.ac.za](mailto:mahuna@ukzn.ac.za)  
Website: [www.ukzn.ac.za](http://www.ukzn.ac.za)

  
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## APPENDIX B: GATEKEEPER PERMISSION TO CONDUCT STUDY

Dear Noleen

Many thanks for providing all the relevant information.

I hereby confirm that Nandi may have access to GLN.

Please can you give me dates and times for her to come to GLN in order to arrange interviews with our staff.

Thanks

**Anthony Waldhausen**

**Director**

Please refer to our email disclaimer at [www.gaylesbiankzn.org/disclaimer.php](http://www.gaylesbiankzn.org/disclaimer.php)



The Gay & Lesbian Network is a registered NonProfit Organisation which is tax exempt and has Section 18A(1) status. All donations to the Network are tax deductible in terms of Section 18A (1) of the Income Tax Act 1962, as amended.

1 August 2018

Ms Nandi Makhaye (SN 212559498)  
School of Social Sciences  
College of Humanities  
Pietermaritzburg Campus  
UKZN  
Email: [nandimakhaye29@gmail.com](mailto:nandimakhaye29@gmail.com) [loubser@ukzn.ac.za](mailto:loubser@ukzn.ac.za)

Dear Ms Makhaye

**RE: PERMISSION TO CONDUCT RESEARCH**

Gatekeeper's permission is hereby granted for you to conduct research at the University of KwaZulu-Natal (UKZN) towards your postgraduate studies, provided Ethical clearance has been obtained. We note the title of your research project is:

*"Hate crimes perpetrated against lesbian women and their personal experiences of violence in family and community settings."*

It is noted that you will be constituting your sample by handing out questionnaires to students on the Pietermaritzburg Campus.

Please ensure that the following appears on your notice/questionnaire:

- Ethical clearance number;
- Research title and details of the research, the researcher and the supervisor;
- Consent form is attached to the notice/questionnaire and to be signed by user before he/she fills in questionnaire;
- gatekeepers approval by the Registrar.

You are not authorized to contact staff and students using 'Microsoft Outlook' address book. Identity numbers and email addresses of individuals are not a matter of public record and are protected according to Section 14 of the South African Constitution, as well as the Protection of Public Information Act. For the release of such information over to yourself for research purposes, the University of KwaZulu-Natal will need express consent from the relevant data subjects. Data collected must be treated with due confidentiality and anonymity.

Yours sincerely



MR S S MOKOENA  
REGISTRAR

Office of the Registrar

Postal Address: Private Bag X64001, Durban South Africa

Telephone: +27 (E) 31 280 8035/2208 Facsimile: +27 (0) 31 263 7824/2204 Email: [registrar@ukzn.ac.za](mailto:registrar@ukzn.ac.za)

Website: [www.ukzn.ac.za](http://www.ukzn.ac.za)



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# APPENDIX C: LESBIAN EXPERIENCE OF VIOLENCE QUESTIONNAIRE

## PERCEIVED AND EXPERIENCED VIOLENCE SURVEY

Good day. I am Nandi Makhaye, a Masters student at UKZN. I am investigating issues around experiences of violence, both experienced or perceived, within the lesbian community. Please will you indicate whether you have experienced any of the following. All answers are confidential and you will not be identified in any way for Sections A, B, C, D, and E. Should you want to talk about your experiences either for the purposes of this research or for referral to somewhere that you can get help, or both, please supply your contact details in Section F. Only my supervisor and I shall have access to this information.

### SECTION A: Biographical Information

Age	Highest Completed Education	Occupation	Rural or urban	Apart from support here, I am in the closet	I have come out to all my family	I have come out to some of my family	I have come out to all of my friends	I have come out to some of my friends	I am openly gay

### SECTION B: Family Experiences

Please go through the items in the following table and tick the appropriate blocks to indicate what you have experienced as a lesbian within your own immediate family circle

	Never	Some time in my life	Once or twice within the last two years	Up to a dozen times within the last two years	Every month within the last two years	Almost weekly within the last two years	It seems like almost every day
<b>I have experienced these:</b>							
<b>Verbal Insults</b>							
I have been called nasty names	0	1	2	3	4	5	6
Comments on my appearance	0	1	2	3	4	5	6
Sexual insults	0	1	2	3	4	5	6
Insults about my family background	0	1	2	3	4	5	6
<b>Physical Experiences</b>							
Things have been thrown at me	0	1	2	3	4	5	6
I have been beaten up by someone in my family	0	1	2	3	4	5	6
I have been hit by someone in my family	0	1	2	3	4	5	6

<b>Weapons</b>							
I have been threatened with a bottle	0	1	2	3	4	5	6
I have been injured with a bottle	0	1	2	3	4	5	6
I have been threatened with stones	0	1	2	3	4	5	6
I have been injured with stones	0	1	2	3	4	5	6
I have been threatened with a knife	0	1	2	3	4	5	6
I have been stabbed with a knife	0	1	2	3	4	5	6
I have been threatened with a gun	0	1	2	3	4	5	6
I have been shot with a gun	0	1	2	3	4	5	6
<b>Sexual abuse</b>							
I have been molested	0	1	2	3	4	5	6
I have experienced forced digital penetration	0	1	2	3	4	5	6
I have been raped	0	1	2	3	4	5	6

### SECTION C: Community Experiences

Please go through the items in the following table and tick the appropriate blocks to indicate what you have experienced as a lesbian within your community

	<b>Never</b>	<b>Some time in my life</b>	<b>Once or twice within the last two years</b>	<b>Up to a dozen times within the last two years</b>	<b>Every month within the last two years</b>	<b>Almost weekly within the last two years</b>	<b>It seems like almost every day</b>
<b>I have experienced these:</b>							
<b>Verbal Insults</b>							
I have been called nasty names	0	1	2	3	4	5	6
Comments on my appearance	0	1	2	3	4	5	6
Sexual insults	0	1	2	3	4	5	6
Insults to my family background	0	1	2	3	4	5	6
<b>Physical Experiences</b>							
Things have been thrown at me	0	1	2	3	4	5	6
I have been beaten up by someone in the community	0	1	2	3	4	5	6
I have been hit by someone in the community	0	1	2	3	4	5	6
<b>Weapons</b>							
I have been threatened with a bottle	0	1	2	3	4	5	6
I have been injured with a bottle	0	1	2	3	4	5	6
I have been threatened with stones	0	1	2	3	4	5	6
I have been injured with stones	0	1	2	3	4	5	6

I have been threatened with a knife	0	1	2	3	4	5	6
I have been stabbed with a knife	0	1	2	3	4	5	6
I have been threatened with a gun	0	1	2	3	4	5	6
I have been shot with a gun	0	1	2	3	4	5	6
<b>Sexual abuse</b>							
I have been molested	0	1	2	3	4	5	6
I have experienced forced digital penetration	0	1	2	3	4	5	6
I have been raped	0	1	2	3	4	5	6

## SECTION D: Relationship Experiences

Please go through the items in the following table and tick the appropriate blocks to indicate what you have experienced as a lesbian within an intimate relationship

	Never	Some time in my life	Once or twice within the last two years	Up to a dozen times within the last two years	Every month within the last two years	Almost weekly within the last two years	It seems like almost every day
<b>I have experienced these:</b>							
<b>Verbal Insults</b>							
I have been called nasty names	0	1	2	3	4	5	6
Comments on my appearance	0	1	2	3	4	5	6
Sexual insults	0	1	2	3	4	5	6
Insults to my family background	0	1	2	3	4	5	6
<b>Physical Experiences</b>							
Things have been thrown at me	0	1	2	3	4	5	6
I have been beaten up by my partner	0	1	2	3	4	5	6
I have been hit by my partner	0	1	2	3	4	5	6
<b>Weapons</b>							
I have been threatened with a bottle	0	1	2	3	4	5	6
I have been injured with a bottle	0	1	2	3	4	5	6
I have been threatened with stones	0	1	2	3	4	5	6
I have been injured with stones	0	1	2	3	4	5	6
I have been threatened with a knife	0	1	2	3	4	5	6
I have been stabbed with a knife	0	1	2	3	4	5	6
I have been threatened with a gun	0	1	2	3	4	5	6
I have been shot with a gun	0	1	2	3	4	5	6



<b>Sexual abuse</b>							
I have been molested	0	1	2	3	4	5	6
I have experienced forced digital penetration	0	1	2	3	4	5	6
I have been raped	0	1	2	3	4	5	6

**SECTION E: Description of Experience**

Please select one or two of the experiences identified above and describe them further.

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**SECTION F: Contact Information (Voluntary)**

Should you wish to interview to discuss anything in this questionnaire further for the purposes of this research or so that you can be referred somewhere else for help, or both, please leave your e-mail address or cell number or both below.

<b>First Name</b>	<b>E-mail</b>	<b>Cell Number</b>

*Thank you for your participation*

## APPENDIX D: ATTITUDES TOWARDS LESBIANS QUESTIONNAIRE

### ATTITUDES TOWARDS LESBIANS

Good day. I am Nandi Makhaye, a Masters student at UKZN. I am interested in how people feel about lesbians – women who partner with women in relationships. Everyone has their own opinion, and there are no right or wrong answers, only how you feel. Please answer honestly and do not give me what you think I am looking for. All answers are totally confidential. Please do not write your name or any other identifying information on this sheet. Please simply tick (✓) in the appropriate column.

Gender	Age	Race	Highest completed Education	Occupation

	Yes, I agree	I am neutral	I disagree
1. I do not think being a lesbian causes a threat to our society.	3	2	1
2. I think if women have homosexual feelings, they should do everything it takes to overcome them.	1	2	3
3. I think being lesbian is not natural.	1	2	3
4. I think that being lesbian is disgusting.	1	2	3
5. I think being lesbian is un-African.	1	2	3
6. I do not think being lesbian is a perversion.	3	2	1
7. I do not think that sex between two women is wrong.	3	2	1
8. I think being lesbian is inhuman.	1	2	3
9. I think being lesbian is immoral.	1	2	3
10. I do not think being lesbian should be condemned.	3	2	1
11. I do not think lesbians should be part of our society.	1	2	3
12. I think lesbianism should be abolished.	1	2	3
13. I do not think being a lesbian is a sin.	3	2	1
14. I do not think Lesbians are sick.	3	2	1
15. I think being a lesbian shows a failure of African morals.	1	2	3
16. I think lesbian couples should be allowed to adopt children.	3	2	1
17. I think lesbians should not be allowed to teach at schools.	1	2	3
18. I would have no problem if my daughter was lesbian.	3	2	1
19. I do not think lesbian marriages should be abolished.	3	2	1
20. I do not like the idea of having a lesbian as a co-worker	1	2	3
21. It does not bother me if my friend is a lesbian.	3	2	1
22. I see nothing wrong with someone being a lesbian.	3	2	1

Do you have a specific opinion about lesbians? If so, please describe it briefly overleaf.

*Thank you for your participation*