

Report LGBTI/CGE Meeting

Background:

The Legal Department began receiving an increased number of complaints dealing directly and indirectly with issues of sexual orientation. While as is required by our mandate and the establishing Act to refer complaints outside our jurisdiction to more appropriate bodies, the Legal Department also began receiving referrals from the South African Human Rights Commission that reflected a convergence of gender and sexual orientation issues.

To better understand the issues being raised, to gain a better picture of the community based and non-governmental organizations and to raise the sensitivity within the CGE to issues of sexual orientation, a meeting was held on 17 November 2005 between the CGE and various LGBTI organizations. While not representative of all organizations in South Africa, the Legal Department made use of a Joint Working Group within this sector as a first step in building relationships. Next steps include a joint meeting with the SAHRC on 24 November 2005 to discuss complaint specific issues.

{mospagebreak title=Overview}Overview

The meeting was a first of what will likely be many gatherings between the CGE and the LGBTI sector. As a first, it is noted that other C9 organizations were not present and will be brought on board considering the overlapping issues and mandates. Effective use of the CSAP program will facilitate the ability of the C9's to redress violations based on gender and sexual orientation. Seeking to establish a base level of understand, much of the meeting consisted of information sharing regarding organizations, their missions, services and roles within the LGBTI sector. For a list of attendees, please see attached.

Questions and discussion took place in order to gain greater clarity. One challenge in writing this report is that no official minutes taker was designated, while the Legal Department Extern was nominally in the role of facilitator, the discussion format was informal and thus difficult to capture all the information shared. Yet, even in this meeting difficult and new issues were raised. Understanding was gained in how transgender and gender expression intersects with sexual orientation as well as is more fully developed under gender theory.

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The majority of the organizations were from Johannesburg and Cape Town. They specialize in specific areas but many are service providers. These range from mental and physical health to providing temporary accommodations and food during crises. All engage in some form of education and outreach, with the Gay and Lesbian Archives serving as a store house of information. The notable absence of legal and advocacy work must be highlighted.

This is due in part to the reorganization of the Equality Project, a legal oriented organization, but there is also a limit on the scope of the organizations' operations. For example, research conducted in this sector is driven not by a pursuit of knowledge but rather to survey the community to better provide for the needs being expressed.

Many of the organizations focus on certain segments of the LGBTI community. SAYLO is a youth run and focused group that has recently been formed to educate and shift the climate for youths and high school students. The Forum for the Empowerment of Women, F.E.W., works to create safe space and increase the visibility of Black African Lesbians. Gender Dynamix is the first Transgender focused group known of in Africa and was created July 2005.

Other organizations organize around sectors. Behind the Mask is an African LGBTI media organization that uses journalism to bring attention to the issues facing that community across the continent. UNISA is a psychology-based research unit within Wits University. Gay and Lesbian Archives focuses on information gathering, preservation and exhibition.

Most of these organizations are relatively new, OUT and Triangle Project being notable exceptions. Many use a variety of forums and avenues to increase the ability of different populations gaining knowledge on LGBTI issues. These include the use of theatre, collection of oral histories, newsletters, comic books, books, research, and support groups.

There are specific issues that intersect with the work that the CGE does in transforming society and form the basis for future collaboration. For more information about exact steps that are open to the CGE please refer to the HOD Legal who will provide that document. A preliminary step that may be the most powerful is the continued sensitization of the CGE staff, especially in the Provinces. This combined with the distribution of materials to provincial offices would greatly increase the spread of information concerning LGBTI rights and issues as the organizations lack the ability to expand at present.

1) "Corrective Rape"

Described as occurring more frequently in the townships, "corrective rape" is when a woman is considered or "outed" as a lesbian and is systematically raped in order to make her heterosexual. As with other forms of Gender Based Violence, the implications of race, poverty and culture intersect with the violence directed toward women. There was no reports of similar tactics being used against men, but from anecdotal stories from the prison setting, men identified as homosexual are also targeted for rape.

2) Transgender

A distinction between gay, lesbian and bisexual identities and transgender identities, including transsexuals, was drawn. Gay, lesbian and bisexual describe sexual orientation, roughly who one is attracted to. Transgender describes the method of presenting gender usually outside what society considers typical "male" and "female" presentation (i.e. a person with a penis wearing a dress). A person gender identity, the gender they believe themselves to be, may not be congruent to the gender that society attributes to biology.

Perhaps the simplest identity that falls within transgender-identities are transsexuals. Transsexuals physically alter the body to more closely match their gender identity. This can include the removal of the penis and taking testosterone to increase body hair, deepen the voice and gain muscle mass in female to male transsexuals. Male to female transsexuals may have breasts constructed, a vaginal opening created, begin wearing make-up and dress in women's attire.

Currently, South Africa follows the Harry-Benjamin Standards of Care which requires that a transsexual seek psychological review and therapy for a period of two years before any surgical operations take place. These operations are normally not covered by medical aid (while similar procedures such as the removal of breasts due to possibility of breast cancer are).

Gender Identity does not match sexual orientation. A male to female transsexual may remain attracted to women. Many transgender individuals are in relationships and their telling their partner presents not only interpersonal difficulties but also legal ones. Does the relationship of a male to female transsexual with a wife become redefined as a same-sex relationship, and at what point does the transsexual or transgender person have access to changed identity documents? A male in a women's bathroom can be arrested, but what if the male identifies as a woman and may be in the process of transitioning to that gender? (on this particular issue the policy of choice from the transgender organizations is the creation of gender inclusive or uni-sex bathrooms especially in public facilities).

3) HIV/AIDS in youth

Somewhat broader than just the LGBTI community, focus needs to be turned to the children who have lost both parents and who might themselves be HIV+. Stereotypes about LGBTI people continue to be expressed strongly in the schools, the pressure to act in a heteronormative way creates the possibility of not using safer sex methods by learners.

4) Harassment in public institutions

Following from above, teachers regularly harass learners who are or are suspected to be LGBTI. The institutions have few mechanisms to deal with this type of discrimination and also lack the sensitivity or will to follow through when cases are reported. Similarly, the police in South Africa is not trusted to handle LGBTI issues and is a source of secondary victimization when LGBTI report cases (it should be noted that the Legal Department has dealt with a case where a heterosexual man survived being raped and also experienced harassment at the police station). There is also confusion about what being LGBTI identified means. This includes beliefs that gay men are really women or women stuck in male bodies, that all transgender people are drag queens/kings, that lesbians really just want to be men.

5) Lack of access to government services

The harassment leads to ineffective service delivery and LGBTI people not seeking out needed services. An issue specifically concerning transgender individuals is the ability to get new identity documents or even identity documents at all as they will have to explain to presumably insensitive government personnel their entire story. Consider the following scenario discussed at the meeting: a person enters the hospital needing critical medical help; the person looks like a woman, her identity document lists her as a man, she has a penis and breasts. This person, having had some surgical intervention, looks like a woman, and except for the presence of a penis would not be considered a man upon meeting her until you view the identity document. Does she get placed in a male or female wing of the hospital. What if this was a prison?

{mospagebreak title=Conclusion}Conclusion

These are some of the many issues discussed at the meeting. Next steps include meeting with the SAHRC, gathering a wider representation of LGBTI organizations, creating a shared vocabulary across sectors and departments and establishing a working structure to coordinate future efforts. Many of the issues listed here can be addressed by further

research, public education and legal reform. It is the opinion of the writer that the root of gender and sexual orientation discrimination is linked. If society did not have such strong views of what a man or woman should be, do, act like, fall in love with or look like, then both forms of discrimination would be less.

It is respectfully submitted that for effective redress and a possible widening of methods to prevent reoccurrence of the issues currently dealt with in the CGE such as Gender Based Violence, workplace discrimination, maintenance issues among others can be informed by the community created alternatives in the LGBTI community and the lessons learned by our sister C9, the SAHRC.

This joint work might also be useful in understanding how to better work with the gender rights organizations and rebuild the women's movement in South Africa.

Respectfully,
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