

## Access to Justice for LGBTI Migrants in Africa 19<sup>th</sup> November 2015, Cape Town



### INTRODUCTION

On 19<sup>th</sup> of November 2015, SALO facilitated a dialogue in Cape Town on: access to justice for LGBTI migrants in Africa. The main speakers included, Hon John Jeffery, Deputy Minister of Justice and Constitutional Development; Isabella Matambanadzo, SALO board member and Zimbabwean gender activist; and Tatenda Ngwaru, from the LGBTI Refugee Unit of the refugee rights NGO, People Against Suffering, Suppression, Oppression and Poverty (PASSOP). The dialogue was enhanced by the participation of a broad and representative grouping of participants including members of civil society, LGBTI migrants, policy makers as well as academics and members of the public. Notably, Mr Zane Dangor, Special Advisor to the Minister of Social Development, managed to actively take part in the discussion around LGBTI migrants and their respective concerns.

### ANALYSIS OF KEY ISSUES

#### **The importance of ‘safe spaces’ in order to allow for honest and constructive dialogue around LGBTI concerns in Africa**

There is a need for safe forums in which LGBTI issues can honestly be discussed, and in which people who identify as LGBTI will not feel intimidated or insecure. Ms Isabella Matambanadzo emphasised the importance

and necessity of safe public spaces where people can genuinely engage around LGBTI concerns, especially as “there are so few spaces to safely discuss LGBTI issues in Africa”.

### **The legacy of repressive and prejudiced colonial era legislation is still adversely affecting LGBTI people, and undermining advocacy around LGBTI issues in Africa.**

Most African countries have retained repressive and archaic colonial era legislation in relation to same sex relations and sexuality, as noted by Ms Matambanadzo. She posed the question: “[w]hy have our governments held onto laws from [the colonial era] to do with homophobia and sodomy? That is the language in most of our judiciary systems. And I think we need to ask our governments, why do you retain these components that are so retrogressive and harmful for ourselves”. Minister John Jeffery concurred with Ms Matambanadzo’s observation and went on to explain that the situation is being exacerbated by how the anti-gay laws rooted in colonial era legislation are now being tightened and enhanced due to populist conservatism, which is then politicised and in some instances appropriated by political leaders. The presence of such repressive laws in a number of African countries, has caused many Africans who identify as LGBTI to migrate to South Africa, as it has the most progressive and commendable legislation around sexual rights on the continent.

### **There is no clear and coherent continental framework that promotes and protects sexual rights**

The lack of a clear continental framework that promotes and protects sexual rights is an obstacle to the realisation of LGBTI rights in most African countries. Ms Matambanadzo argued that there appeared to be a ‘schism’ between the ‘terminology’ of the Sustainable Developmental Goals and Agenda 2063, especially with regards to aspects such as sexual orientation, sexual rights, sexual pleasure and sexual choice; which are not directly and adequately addressed in Agenda 2063. Mr Dangor acknowledged the nuances and challenges around this by noting: “...in terms of the SDGs, at one point [during negotiations] it became the African Group minus South Africa; that is a triangle that emerged, not just around the LGBTI rights, but also on gender rights and reproductive rights. So those three issues were actually being [contested] by the Africa Group, and there were many African countries that wanted to voice their opinion, but actually felt that the power dynamics within the continent were such that they did not have a voice”. Therefore it is clear that there is no continental consensus around LGBTI and sexual rights.

### **African persons who identify themselves as LGBTI face high levels of discrimination, prejudice and possible harm**

African individuals who identify as LGBTI are potentially vulnerable. Ms Tatenda Ngwaru explained that identifying oneself as LGBTI can directly result in discrimination and prejudice. The effects of this on such an individual can be that their rights with regards to health, work and education are severely curtailed or outrightly denied on the basis of sexuality and sexual identity. Ms Ngwaru also stated that migrant LGBTI people seeking asylum in South Africa are potentially vulnerable, as a number of them have no means to fend for themselves and barely have any subsistence whilst their applications are being processed.

### **South African leadership on LGBTI issues is vital throughout the continent**

A number of contributions from the floor implored for greater and more involved leadership from South Africa around LGBTI issues. South Africa has commendable sexual rights legislation and is at the global forefront in terms of advocacy for LGBTI rights; and yet some participants feel that its leadership around these issues on the continent is somewhat subdued. Minister Jeffery explained that South Africa has had to be careful and strategic about how it approaches other African countries around LGBTI issues. He stated, “[w]e as South Africa don’t feel that shouting at other countries is going to have the desired effect”. Minister Jeffery further noted that

South Africa would use its international leadership on LGBTI rights to promote dialogue on LGBTI issues continentally. He informed the participants that there will be an Africa-focused regional workshop on LGBTI rights in early 2016, which will seek the participation of a broad spectrum of African stakeholders, from civil society to government institutions amongst others. Mr Zane Dangor explained that South Africa has been advocating for LGBTI rights “within the confines of what can happen in a multilateral space, as much as possible”, in terms of the African context. Mr Dangor asserted that it was vital for civil society and other non-state groupings to continue to advocate and mobilise for LGBTI rights, so as to “put pressure on states” to address LGBTI issues. He went on to state: “[s]o the challenge is, to what extent can we work with progressive civil society in South Africa and in the region, to actually make the work that we do within the international arena a little easier ?”

## **RECOMMENDATIONS**

**There is need for more ‘safe spaces’ where LGBTI issues can be constructively and honestly discussed and addressed; and where people who identity as LGBTI will not be discriminated against or face harm.**

In a climate of rising populist conservatism, the space for constructive and open engagement around LGBTI issues has been severely constrained; even in traditionally progressive contexts such as the religious community and trade unions. Therefore, there is a crucial need for the facilitation of ‘safe’ forums to address LGBTI concerns.

**Sexual Rights have to be integrated into continental initiatives such as Agenda 2063 and the Common African Position that feed into the global human rights framework.**

There is great need for African initiatives such as Agenda 2063 to be enhanced by the inclusion of resolutions that speak to sexual rights and the protection of LGBTI persons. Without this, there is no continental framework that can be referred to with regards to broad sexual rights, including those that relate to LGBTI persons. By having such a framework, African countries can be called upon to adhere to such a framework in terms of upholding human rights.

**Support must be given to South Africa, in terms of advocacy around LGBTI rights**

South African cannot aggressively push for LGBTI rights in Africa on its own, as it risks regional isolation in doing so. Therefore, it is important that regional and continental civil society lend their support to South African diplomats and policy makers. The possibility of South Africa cooperating and partnering with African countries that have progressive positions on LGBTI rights such as Mozambique, Cape Verde and Mauritius must be practically and strategically taken forward.

**Activism and mobilisation around LGBTI rights and issues is crucial, as this complements the application and effectiveness of the law**

It is not enough to have progressive laws; they need to be underpinned by consistent mobilization and advocacy. As noted by Mr Dangor: “[l]ocally, we have come to the conclusion that the policy of law is not enough, we need horizontal advocacy to take place all the time and that requires mobilization by civil society...I can give you an example of where in terms of Homes Affairs not registering a transgender person, pressure was put on ourselves by Bram [Hanekom] and other activists [so that] the Minister of Homes Affairs actually instructed his staff to go into the office over the weekend and make sure that the work gets done”.

In Mozambique, activism and advocacy around non-discrimination based on sexual identity was integrated into mobilisation around non-discrimination in the workplace in relation to labour laws; ultimately resulting in a progressive and landmark ruling, which sets an important precedent for future LGBTI rights cases.

### **Awareness about African LGBTI concerns and the condition of LGBTI people throughout the continent must be reinvigorated and innovatively communicated**

There is a need to reinvigorate awareness around African LGBTI issues, to complement the activism and advocacy around LGBTI causes. This may include the use of popular medium such as film, literature and web-based applications. There needs to be more information disseminated about LGBTI rights, in order to educate and inform African citizens. Doing this in an innovative manner, underpinned by empathy and understanding, would complement advocacy around LGBTI issues.

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