

SALO Human Rights Day dialogue: Focusing on Gender and Human Security in Africa, particularly violence and discrimination against LGBTI Individuals

25th March 2014, Burgers Park Hotel, Pretoria

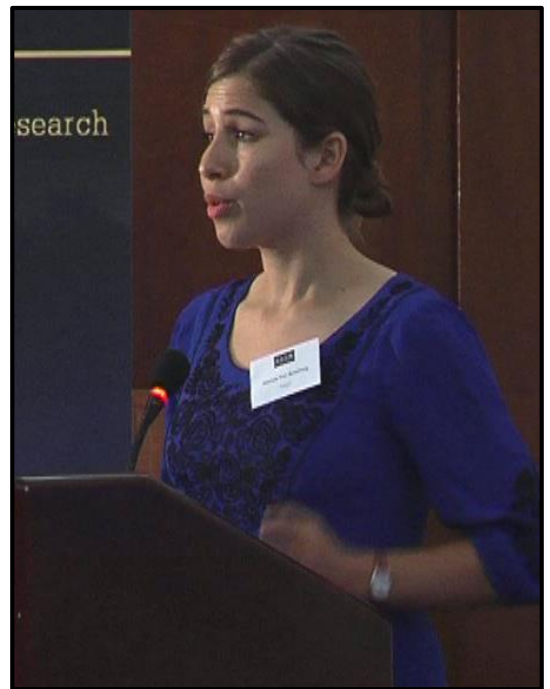
Executive Summary

This dialogue was hosted by the Southern African Liaison Office (SALO) to stimulate discussion on Gender and Human rights in Africa, with a particular focus on the spate of anti-gay laws and rising homophobia in Africa. The discussion centered around the AU and member states' positions on the matter. While acknowledging the sensitivities, the discussion explored how South Africa, guided by its strong human rights ethos, could use its position of influence within the continent to provide leadership in this discussion. The workshop brought together a wide array of speakers and participants who are key decision makers and actors in their own rights. Following Ms Marissa van Rensburg's (SALO) welcoming address, Deputy Minister John Jeffery (Department of Justice and Constitutional Development) spoke to South Africa's constitutional Lesbian, Gay, Bisexual, Transgender/Transsexual and Intersexed (LGBTI) rights, as well as government interventions which seek to ensure that these rights are protected and realised. He also discussed the South African government's approach of strategic "quiet diplomacy" in advocating for the expansion of LGBTI rights on the continent. Mr Deprose Muchena (Director, Amnesty International Southern Africa Regional Office), as the second speaker, reflected on the Africa Rising narrative and the much anticipated developmental prospects for the continent; conversely, Mr Muchena also noted the divergence from democratic and human rights practise. Mr Ian Southey-Swartz (Programme Coordinator for the LGBTI Programme and the HIV and AIDS Programme, Open Society Initiative for Southern Africa) followed, discussing the recent string of anti-LGBTI as an indicator of a sudden increase in anti-LGBTI sentiments across the African continent. Mr Southey-Swartz advocated for a confrontational approach to LGBTI advocacy in the continent. Ms Mary Audry Shard (Gays and Lesbians of Zimbabwe, GALZ), highlighted the challenges faced by LGBTI in Zimbabwe, and Ms Bernadette Muthien (Human Rights Activist, Scholar and Poet) spoke to homosexual practices in pre-colonial Africa and the adoption of colonial, patriarchal interpretations of religions and cultures that reject homosexuality. Lastly, Mr Joel Gustave Nana (Director, African Men for Sexual Health and Rights) discussed the visibility of LGBTI people on the continent in the broader context of international politics.

Summary of Presentation

Welcome address: Marissa van Rensburg- SALO

Marissa van Rensburg stated that the current Human Rights month celebrations in South Africa presented an opportune time to review how far SA had come in terms of realising the progressive human rights enshrined in the constitution, as well as in terms of advancing progressive human rights in the continent. In particular, the rights of LGBTI people, which South Africa is well placed to champion as a world leader in LGBTI rights and the only African country to legally recognise LGBTI rights. Marissa went on to lament that despite the progressive constitutional LGBTI in SA, as well as commendable government policies and initiatives to protect these rights, LGBTI people within SA still experience high levels of violence and discrimination based on their sexual orientation and gender, due to widespread anti-LGBTI sentiments within SA. She asserted that while many countries in Africa are experiencing rapid economic, social and political development, people should not be excluded from this development on the basis of their sexuality. Ms van Rensburg, took a moment to thank partner organisation PASSOP, a grassroots South African-based civil society organisation that had assisted SALO to engage LGBTI activists from across the continent. Marissa thanked Ambassador Nozipho Mxakato-Diseko, Deputy Director-General of Multilateral Affairs at DIRCO; Mr Pitso Montwedi Head of the DIRCO Desk for Human Rights and Humanitarian Affairs; Pregs Govender, Deputy Chair of the South African Human Rights Commission; and Alice Mokwe, the award-winning human rights activist from Botswana in advance for their contributions in the dialogue. She also stated that SALO would be committed to mainstreaming LGBTI rights in its focus areas of human rights, development, and peace and security.



Keynote Address: John Jeffery- Deputy Minister, Department of Justice and Constitutional Development

Deputy Minister John Jeffery sought to reflect on the African position and in particular South Africa's role in the promotion of LGBTI rights on the continent. He thanked SALO for its work on peace and security and re-affirmed South Africa's achievements in terms of LGBTI rights, as the first country in the world to prohibit discrimination based on sexual orientation.

The Deputy Minister went on to highlight SA's progressive legislation in terms of LGBTI rights, including:



- ❖ Legislation protecting LGBTI people against discrimination in the workplace on the grounds of sexual orientation
- ❖ The Children's Act which permits joint and step adoption by same-sex couples

- ❖ The Civil Union Act which legalised same-sex marriage
- ❖ The Alteration of Sex Description and Sex Act, which permits Inter-sexed persons to legally undergo a sex change
- ❖ The Domestic Violence Act, which provides the same protection to same-sex relationships as it does to heterosexual domestic situations
- ❖ The Promotion of Equality and Prevention of Unfair Discrimination Act which provides for, amongst others:
 - The establishment of equality courts in an attempt to give effect to the spirit of the Constitution, in particular the promotion of equal enjoyment of all rights and freedoms by all persons.
 - However, he also pointed to the under-use of the equality courts

The Deputy Minister brought to the workshop's attention a 2013 Amnesty International report entitled *Making Love a Crime: The Criminalisation of Same Sex Conduct in Sub-Saharan Africa*, which called South Africa "a country which is exemplary in, and should be applauded for, its active commitment to including protections against discrimination on the grounds of sexual orientation and gender identity in its Constitution, and for seeking to persuade neighbouring countries to do the same."

Mr Jeffery asserted that South Africa is at the forefront of dialogue on the issue of sexual orientation at a regional and international level. In 2011 South Africa introduced the first ever resolution in the United Nations Human Rights Council, entitled 'Human Rights, Sexual Orientation and Gender Identity' in order to incrementally advance LGBTI rights in other countries; the resolution requested the High Commissioner to produce a report which provides insight into the challenges facing LGBTI persons globally. This report provided some useful recommendations. Mr Jeffery explained that a panel discussion emanating from Resolution 17/19, was subsequently convened by the Human Rights Council, with South Africa chairing the discussion. Reporting on the event, South African media found that South Africa positioned itself firmly as a global leader in the protection of the rights of LGBTI people, and played a key role in preventing a walk-out of a group of other African states. This historic debate, which is argued to have been the most divisive yet in the history of the UN's General Assembly Human Rights Council, was sponsored by South Africa and Brazil. Despite significant progress, Mr Jeffrey states that same-sex relationships are still illegal in more than a third of the countries around the world and punishable by death in five. He referred to the aforementioned Amnesty International report, which found that homosexual acts are still a crime in 38 African countries.

He indicated that South Africa has been criticized for not taking a strong enough position in relation to the anti-gay legislation in Uganda. In response to this criticism, Mr Jeffrey explained that South Africa's approach is one of strategic 'quiet diplomacy', as part of an incremental approach of advancing human rights in the region. The Deputy Minister went on to assert that South Africa is sensitive to the realpolitik of the continent as a considerable peace and security actor with significant economic muscle, and therefore confrontational interventions need to be carefully considered.

The Deputy Minister spoke about the regional human rights seminar that South Africa would be hosting in order to determine approaches for the African region and to generate dialogue on LGBTI rights. He also referred to the African Union's mechanisms to promote and protect human rights, such as the African Commission for Human and People's Rights. The Deputy Minister informed the workshop that Civil Society Organisations (CSO) enjoy observer status within these mechanisms and are invited to make submissions. Civil society therefore has platforms to effect change not only in South Africa, but in all AU member states.

To map the challenges LGBTI communities face in South Africa, Mr Jeffery referred to the Organisation for Refugee Asylum and Migration's report called Discrimination and Persecution of LGBT Individuals in South Africa, which found that:

- ❖ Discrimination and violence against LGBTI persons is still rampant
- ❖ LGBTI men and women who are victims of sexual assault and so-called 'corrective rape' often face harassment, ridicule and intrusive lines of questioning from police officials when they report these crimes; police investigations of these crimes are also often poorly conducted
- ❖ Police officers themselves are sometimes the perpetrators of violence against LGBTI individuals
- ❖ Societal attitudes towards LGBTI people are extremely poor, with eighty percent of South Africans believing that sex between two men or two women is always wrong and that homosexuality is 'un-African'.
- ❖ Young LGBTI South Africans often face discrimination and violent bullying at school, and many report being driven out of their homes by their families
- ❖ LGBTI adults face widespread discrimination in the workplace

The above forms of discrimination can all result in difficulty obtaining adequate education, employment and community support, which in turn can lead to situations of poverty.

The study also states that the risk of discrimination and violence is heightened when LGBTI persons do not conform to the strict gender norms of South African society, or when they are activists for LGBTI equality, or members of a particular social class or marginalised racial group. Regarding this situation, Deputy Minister Jeffrey acknowledged the disconnect between South Africa's legal position and the reality on the ground. To address this, in 2011 the Minister of Justice and Constitutional Development established the LGBTI National Task Team (NTT) to develop a national intervention strategy on LGBTI rights. Following protracted debates amongst the institutions involved in the process, the Working Group of this Task Team commenced its work in May 2013. In an effort to ensure representation of the LGBTI sector on the Task Team, CSO alliance-building and information gathering workshops were held in all nine Provinces.

Mr Jeffery explained that the purpose of the workshops was to connect with provincial LGBTI CSOs to ensure that there was representation from all 9 provinces on the NTT, and to get a chance to understand the different local dynamics of violence and discrimination against LGBTI people - all towards the finalisation of the NTT's national intervention strategy. In addition, Mr Jeffrey pointed out that one of the main issues brought to the Ministry's attention was the issue of long-outstanding, impending LGBTI cases in the criminal justice system, and for that reason a rapid response team on pending cases relating to gender- and sexual orientation-based crimes in the criminal justice system was established. This multi-departmental team consists of the Departments of Justice and Constitutional Development, the Police, Correctional Services, the Department of Social Development, the National Prosecuting Authority and relevant civil society organisations. Urgent resolutions were adopted to track progress regarding these cases, as well as to urgently develop rapid response mechanisms within civil society networks, so that the police can be alerted immediately when a gender- or sexual orientation-based crime takes place against an LGBTI person. To this end, the Department of Justice and Constitutional Development agreed on a terms of reference and developed a short-term mutual tracking tool that allows it to monitor progress on individual cases. The government also intends to introduce the concept of hate crimes into our criminal law on the basis of sexual orientation. However, the process relies on public participation before decisions can be taken.

“We need to continuously send out the message that LGBTI rights are human rights and that discrimination against LGBTI persons is not different from discrimination on the basis of race. Discrimination is discrimination and it will not be tolerated in a free and equal, democratic South Africa”.

Deprese Muchena- Director Amnesty International, Southern Africa Regional Office



Mr Muchena reflected on the Africa Rising narrative and the much anticipated developmental prospects for the continent. Conversely, Mr Muchena also noted the human rights contradiction that exists concerning the trend of divergence from democratic and human rights-based practice in many African countries. Mr Muchena expressed his appreciation for the South African government’s leadership in LGBTI rights, and began by speaking on the human rights crisis in Southern Africa. He called for Africans to fight for their human rights.

“The region is awash with human rights violations...we have to stand up in order to create the kind of region that corresponds with the ‘Africa Rising’ narrative”.

Mr Muchena referred to the Amnesty International report mentioned in Deputy Minister Jeffrey’s speech, following research on sub-Saharan Africa to understand the landscape, especially the realities facing the LGBTI community. He said that according to the report, homosexuality is still illegal in thirty-eight African countries and emphasised this as a concern by naming several African countries where homosexuality received the death penalty. Mr Muchena argued that there is a trend in civil society to subdivide the enjoyment of rights and he argued that only dialogue within civil society and between governments can curb this trend. Providing historical context, Mr Muchena stated that in most African countries, laws criminalising same-sex conduct are a legacy of colonialism. Instead of moving beyond the colonial state, the post-colonial state continues to abide by draconian colonial architecture in order to limit rights.

Mr Muchena refuted the popular assertion of many African leaders that homosexuality is a non-African phenomenon, saying that it is well documented that homosexuality existed across pre-colonial Africa. He also referred to certain religious groups from the West as actively promoting homophobia in Africa after having failed in their attempts to encourage the criminalisation of homosexuality in their own country. Mr Muchena appreciated South Africa’s tactful diplomatic approach towards advancing LGBTI rights in the region, but at the same time, he directed attention to problematic policing within South Africa that requires urgent remedy in the form of sensitisation to LGBTI issues. In his concluding words, Mr Muchena strongly urged for the introduction of human rights education in South African schools to entrench an understanding of the Constitution at a young age, so that citizens will know their human rights, and in order to develop a culture of civil education.

Ian Southey-Swartz- Programme Coordinator for the LGBTI Programme and the HIV and AIDS Programme, at the Open Society Initiative for Southern Africa (OSISA)

Ian Southey-Swartz began by bringing attention to several current LGBTI court case proceedings in Botswana, Malawi and Zambia, as illustrative of a sudden wave of anti-LGBTI sentiments across the African continent. Like previous speakers, he strongly encouraged the delegates to read the Amnesty

International report, 'Making Love a Crime', as he felt it gave an accurate depiction of the situation facing LGBTI people across the continent. He told the inspiring story of the Steven Monjeza case in Malawi, in which OSISA was highly successful in bringing the United Nations Secretary-General, Ban-Ki Moon, as well as Michelle Bachelet of the Global Fund for Women to Malawi to oppose the case. Whilst he appreciated the incremental approach to LGBTI issues as described by previous speakers, he asserted that on occasion, a confrontational conversation is required to effect change. He acknowledged that currently, Africans are in the process of crafting an African narrative around the human rights of LGBTI people. He cautioned that we should not forget the broader field of human rights in this process.



“Every time there is any erosion of the rights of a minority, the LGBTI community loses, and the same applies the other way around, every time there is a law that criminalises LGBTI people....I think there’s a broader community that loses. And so we must not forget the link between minorities in the broad sense and LGBTI in particular.”

Ian raised the issue that American Right-wing evangelists seem to have more financial support and human capacity than human rights activists on the continent. It is therefore critical that human rights activists are more strategic in their engagement, to compensate for this fundamental structural difference.

Commenting on South Africa’s role on the continent, he stated that while he appreciates South Africa’s leadership, the country needs to be more proactive in protecting the LGBTI community locally and on the international scene. Locally, he referred to the ongoing violence against the LGBTI community, noting that society needs to take a stronger stance against it. Internationally, he referred to the watering down of human rights language within critical negotiations. In closing, Ian pointed out the trend between electioneering and homophobic rhetoric in the continent; the criminalisation of the LGBTI community within a narrative of so-called African norms and values, has become electoral capital for leaders. It is therefore essential to hold political leaders accountable for their homophobic language.

Mary Audry Shard- Gays and Lesbians of Zimbabwe (GALZ)

Mary Audry Shard highlighted the challenges faced by lesbian and gay people in Zimbabwe. She began by advocating for the creation of LGBTI safe havens in all African countries.

“I think it is important for us to create the safe havens in our own countries as activists, and continue the fight [on the continent].”

Mary explained that while Zimbabwe is not the most dangerous country in the world in which to be lesbian or gay, it is probably the most vocally homophobic. President Mugabe, in August 1995, vilified homosexuals as being “worse than pigs and dogs”. He continues to do so and he denies the existence of LGBTI organizations in Zimbabwe. Ms Shard reported that police are actively suppressing LGBTI activism, going as far as blackmailing LGBTI people in Zimbabwe. State-sanctioned homophobia is a challenge to GALZ programming, because they are unable to host



workshops and meetings. There are very few places that Ms Shard felt are safe for LGBTI activists in the country. The Public Order and Security Act is used to stifle the work of GALZ, limiting places in which her organisation can meet. She proceeded to give an account of a recent experience wherein a workshop was disrupted by the police, resulting in 22 people being detained and the two organizers harassed and taken into custody for several hours. Mary acknowledged that the violence and hate speech against LGBTI is frequently reported by the community. A worrying trend, she explained, is that of family members being the persecutors.

Government officials, religious and traditional leaders have given their voices in support of the exclusion of LGBTI people from national processes. The LGBTI community is therefore effectively oppressed within public spaces and in educational institutions, as well as in places mandated to provide support to LGBTI people. Mary directed attention to the period around the Government of National Unity and the resultant elections, arguing that there was an increase in human rights violations in the form of unwarranted arrests, physical assaults, harassment and raids on GALZ' organisational offices for LGBTI activists. Some of these incidents went unreported, limiting opportunities for redress.

Bernadette Muthien- Human Rights Activist, Scholar and Poet



Bernadette Muthien sought to speak about the phenomenon of woman-to-woman marriage in the African continent; colonialism in relation to the ways in which religions and cultures are interpreted; and patriarchy and its effects upon LGBTI advocacy. She began by stating that women-to-women marriages have been widespread across the African continent since pre-colonial times, giving a tribal example of Mojaji people to illustrate this. She mentioned that matrilineal societies exist in several African countries still today. Bernadette explained that despite patriarchal encroachments, up to twenty percent of all societies are still matrilineal today. In turn, one fifth of all societies are both socially egalitarian and gender egalitarian. She asserted that Colonialism introduced patriarchal Christianity which

pervaded cultural and social norms.

“Religious and colonial ideologies still actively eradicate ancient practices, like matrilineage, woman to woman marriage, that seek to reduce women’s agency and power, and that seek to control the sexualities of all Africans and of women in particular.”

Bernadette explained that it is often difficult for African human rights activists to reconcile progressive human rights issues such as homosexuality and sexual health and reproductive rights with their religious beliefs in addition to prevailing legal infrastructure. She expressed her view that patriarchal interpretations of society lead directly to the erosion of women’s security and the security of beyond-hetero-normative gender non-conforming peoples, and argued that it also contributes to what Franz Fanon has called “false consciousness”, in that the oppressed are not only neurotic, but also internally divisive and divided, an outcome of the colonial so-called ‘divide and rule’. Bernadette explained that solidarity, alliances and movement building are greatly hampered by this so-called nervous condition and division.

In her concluding remarks, Ms Muthien called for Africans to decolonize their consciousness and to unite against patriarchy and hate-inspired religious and cultural interpretations, as well as a rights discourse emanating from the global North. She called for Africans to ‘rematriate’ or reclaim their ancient practices like matrilineality and woman to woman marriage, and indeed reclaim person-to-person relationships beyond gender identity and sexuality. Finally, Bernadette sought to remind the delegates that justice and compassion together lay the foundation of every faith and culture in the world, as well as for institutions like the United Nations. She asked for people to remember former President Nelson Mandela’s wisdom; he believed that his freedom is inextricably connected to the freedom of everybody else, everywhere.

Joel Gustave Nana- the Director for the African Men for Sexual Health and Rights



Joel Gustave Nana spoke to the strong anti-homosexuality sentiment displayed across the continent, arguing that, ultimately, the visibility of LGBTI rights would not have been possible at the beginning of the 2000’s. Realising the existence of LGBTI people has often times come with a negative and violent response from the state and civil society. Joel argued that there is a broader conversation on power that influences the ability of LGBTI rights to be placed on the agenda. It begins with process in which LGBTI issues are placed on the United Nations Human Rights Council’s agenda; following which, LGBTI rights reach the United Nations General Assembly. It reaches the agenda because a powerful state often coerces other states to become a signatory of a resolution.

On the other hand, LGBTI rights reach agendas due to civil society organizations calling out human rights violations. Also, more so than CSOs, the existence of LGBTI citizens challenges existing structures. In this conversation of power and human rights, Joel commented on the human rights bargaining occurring in high level human rights negotiations. Human rights discussions are often watered down in negotiations due to the prioritization of certain human rights and the unwillingness of states to agree to each other’s priorities. Joel explained that LGBTI people desire more than the right to association, and that they also require a range of civil, political and socioeconomic rights for empowered living. CSOs are therefore amongst the guilty actors who choose specific rights to advocate on over others. As a result, the integrity of their work is at risk ultimately, due to international politics. Human rights actors must acknowledge the issue of agency. Joel asserts that the existence of colonial laws reduce African agency and challenge claims to autonomy. Joel concluded his presentation with a brief comment on the African Union, saying that LGBTI CSOs are disillusioned and frustrated by the African Union, due to biased voting arrangements that dim any prospects of success. He therefore justified his decision to use an incremental strategy for LGBTI advocacy on the African Commission on Human and People’s Rights; and the success in spreading knowledge and understanding of the issues, and placing the issues within the broader agenda to be able to address it at that level.

The discussion centered around the AU and member states’ positions on the matter. While acknowledging the sensitivities, the discussion explored how South Africa, guided by its strong human rights ethos, could use its position of influence within the continent to provide leadership in this discussion. The workshop brought together a wide array of speakers and participants who are key decision makers and actors in their own rights. Following Ms Marissa van Rensburg’s (SALO) welcoming address, Deputy Minister John Jeffery (Department of Justice and Constitutional Development) spoke to South Africa’s constitutional

Lesbian, Gay, Bisexual, Transgender/Transsexual and Intersexed (LGBTI) rights, as well as government interventions which seek to ensure that these rights are protected and realised. He also discussed the South African government's approach of strategic "quiet diplomacy" in advocating for the expansion of LGBTI rights on the continent. Mr Deprose Muchena (Director, Amnesty International Southern Africa Regional Office), as the second speaker, reflected on the Africa Rising narrative and the much anticipated developmental prospects for the continent; conversely, Mr Muchena also noted the divergence from democratic and human rights practise. Mr Ian Southey-Swartz (Programme Coordinator for the LGBTI Programme and the HIV and AIDS Programme, Open Society Initiative for Southern Africa) followed, discussing the recent string of anti-LGBTI as an indicator of a sudden increase in anti-LGBTI sentiments across the African continent. Mr Southey-Swartz advocated for a confrontational approach to LGBTI advocacy in the continent. Ms Mary Audry Shard (Gays and Lesbians of Zimbabwe, GALZ), highlighted the challenges faced by LGBTI in Zimbabwe, and Ms Bernadette Muthien (Human Rights Activist, Scholar and Poet) spoke to homosexual practices in pre-colonial Africa and the adoption of colonial, patriarchal interpretations of religions and cultures that reject homosexuality. Lastly, Mr Joel Gustave Nana (Director, African Men for Sexual Health and Rights) discussed the visibility of LGBTI people on the continent in the broader context of international politics.

The workshop stimulated robust discussion, with several constructive and actionable recommendations coming out of it, as listed above. At the start of the workshop, participants appeared to be divided between those who believed that SA is 'too quiet' on LGBTI rights violations in the continent, and those who supported SA's approach of advancing LGBTI rights in the continent through strategic quiet diplomacy within regional institutions and at a leadership level; the two opposing approaches which Deputy Minister Jeffrey terms "megaphone diplomacy" vs. "quiet diplomacy". Through robust debate, this stark divide appeared to diminish somewhat, with participants being exposed to the merits of each approach. This was the first of many LGBTI focused SALO dialogues, given the urgent need for consensus-building around the protection and expansion of LGBTI rights in Africa.

The analysis and recommendations included in this Policy Dialogue Report do not necessarily reflect the view of SALO or any of the donors or conference participants, but rather draw upon the major strands of discussion put forward at the event. Participants neither reviewed nor approved this document. The contents of the report are the sole responsibility of SALO, and can under no circumstances be regarded as reflecting the position of the donors who provided financial assistance for this policy dialogue session.

About the Southern African Liaison Office:



The Southern African Liaison Office (SALO) is a South African-based not-for-profit civil society organisation which, through advocacy, dialogue, policy consensus and in-depth research and analysis, influences the current thinking and debates on foreign policy especially regarding African crises and conflicts.

SALO would like to thank the supporters of this workshop including:

The Royal Norwegian Embassy, Pretoria * Irish Aid and the Embassy of Ireland, Pretoria * The Danish Embassy, Pretoria * The Open Society Initiative for Southern Africa (OSISA)

