

SALO 

Liaison, Dialogue and Research

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Building International, Regional and National Consensus

Access to Justice for LGBTI Migrants in Africa

Policy Dialogue Report No: 48



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Summary

In the spirit of the new Sustainable Development Goals' (SDGs) motto 'leave no one behind', the Southern African Liaison Office (SALO) hosted a dialogue on the 19th of November 2015 to explore the myriad challenges facing LGBTI migrants seeking asylum in South Africa (SA). The dialogue provided space for discussion between LGBTI migrants from across the continent, members of civil society and representatives of the South African government. The dialogue was chaired by Bram Hanekom, a refugee rights activist, and speakers included; the Honourable John Jeffery, the Deputy Minister of the Department of Justice and Constitutional Development, Isabella Matambanadzo, a SALO Board member and the Co-Chairperson of The Other Foundation, a regional LGBTI foundation, Tatenda Ngwaru, a representative of the LGBTI Refugee Unit at People Against Suffering Suppression Oppression and Poverty (PASSOP). Zane Dangor, Special Advisor to the Minister of Social Development, also gave a special input from the floor.

Isabella Matambanadzo

Isabella began by stating that there are very few public spaces to safely discuss LGBTI issues in Africa, and expressed her appreciation for SALO having a public meeting such as this. She shared her perspective on the issues affecting LGBTI migrants on the continent, stating that it is vital to open up spaces for dialogue and discussion. She raised a concern around the re-emergence of conservative policies around human mobility in the sub-region; where governments have retained colonial settler borders and have not implemented the 'one passport, one Africa' policy that was advocated for by the same leaders.

Regarding the SDGs, Isabella stated that she viewed them as an opportunity, but also noted their "neutered" human rights language. She indicated that the SDG documents do not use adequate language around sexual orientation, sexual rights, sexual pleasure and sexual choice. She further expressed concerns about the danger of Africans' sexuality being cast only in terms of health; reproductive and maternal health, stating that this creates a context wherein there is a lack of language around healthcare that is appropriate for people who identify in different sexual ways.

Expanding on this, Isabella referenced feminist, Patricia McFadden, who talks about socio-sexual anxiety; where governments have created contexts where, if one is not 'hetero-normal' in nature they must feel socio-sexual anxiety about their sexual identity, which she views as a form of domination and control. She emphasised the importance of dispelling the myth that homophobia is an "African thing", stating that laws that have to do with homophobia and sodomy are colonial-era laws that were never removed by the independent governments. Isabella stated that there is a need to ask African governments why they retain these components that are retrogressive and harmful.



She raised a concern about SA defining itself as a leader in the areas of rights to sexual freedom, sexual pleasure and sexual choice, but at the same time not putting enough pressure on the other states in the sub-region. She argued that the notion of sovereignty tends to be used as an excuse not to be involved in the protection of human rights, she argued. According to Bella, activists in SA should challenge government to rethink its involvement. She applauded Mozambique for joining SA in promoting laws that safeguard sexual orientation at the workplace, stating that Mozambique should be an ally of activists.

She concluded by stating that while LGBTI individuals migrate to SA in search of safety, it is important to keep in mind that SA is not a utopia, with thirty documented cases of black lesbians being murdered in SA on the grounds of their sexuality since 1998, and countless other undocumented cases. She expressed her concern at the huge impact that class privilege and racial privilege has in terms of the implications that one's sexual orientation has on one's life and safety. She asserts that there is a need to interrogate the issue of having certain places in SA that are not safe to be 'out' and queer in.

Tatenda Ngwaru



Tatenda began by applauding the LGBTI migrants present for taking the risk of leaving their families and homes in order to be true to themselves. She stated that LGBTI people leave their countries, because the legislative environment does not recognise their sexual orientation and gender identity, and due to consistent discrimination by the public, community and sometimes family members. Furthermore, she noted that in most countries, transgender persons face particular forms of stigma and discrimination that undermine their access to healthcare, work and education.

She stated that in most countries, transgender individuals cannot obtain identity documents that reflect their true gender, and that medical aid companies are not only reluctant to cover transition related medical procedures, they also only cover expenses specific to the gender listed in the legal documents. This results in necessary regular sexual and reproductive health services being excluded which would otherwise be covered.

She then posed a question as to whether the lives of LGBTI migrants improve when they come to SA. The discussion found that while the rights of LGBTI migrants are protected in SA, there are a lot of challenges, including:

1. Many LGBTI refugees end up being homeless, because they do not know anyone in SA.
2. The process of acquiring the necessary documentation from Home Affairs can take between six months to a year; according to statistics from a PASSOP report, only 10% of LGBTI refugees are granted refugee/asylum seeker status.

3. Most LGBTI refugees are forced into sex work to earn a living, due to lack of access to employment; this can result in people being victims of sexual violence, without legal recourse due to the fact that sex work is criminalized in SA.

Tatenda then suggested the following:

1. LGBTI migrants' rights should be prioritized within the agenda 2030 targets.
2. The police and other relevant stakeholders should be sensitized to issues specific to the protection of LGBTI migrants' rights.
3. The conditions around access to Home Affairs documentation, healthcare and employment opportunities should be improved.
4. The Ministry of Health should scale-up access to healthcare for LGBTI migrants
5. The SA government should support the work done by organisations working on promoting and protecting LGBTI migrants' rights to ensure that their efforts are adequately resourced.
6. We must not forget what 'Ubuntu' dictates; that we are neighbours and thus belong to one family.

She concluded by making an appeal for African governments to act together in protecting LGBTI rights in order for migrants to be able to return home and feel safe in their own countries; stating that being an LGBTI asylum seeker is a fate that she would not wish on anyone.

Deputy Minister John Jeffery



DM Jeffery indicated that LGBTI rights originate from the provision that nobody (both citizens and noncitizens) should be discriminated against on the basis of their sexual orientation, in the constitution of South Africa's Equality Clause. Any law that is discriminatory can be struck down in the Constitutional Court. The Deputy Minister noted that in the case of discrimination on the grounds of sexual orientation, the Equality Court, Magistrate's Court or

the High Court, depending on the severity of the matter can be approached for recourse, and that one does not need much money for lawyers.

Regarding the violence against and murder of black lesbians mentioned by Isabella, DM Jeffery indicated that SA is unfortunately quite a violent society, with a lot of sexual violence. He stated that a national task team was established in 2011 to come up with an intervention strategy on how the criminal justice system can be improved with regard to crimes against LGBTI people. "The laws are there, but the problem is often with the police who investigate these crimes", he said, explaining that homophobic police investigating a case of violence or rape against an LGBTI person may not handle the case properly. He indicated that rural areas tend to be more conservative and homophobic, though that in theory there shouldn't be any discrimination against LGBTI people in SA.

Regarding LGBTI refugees, he stated that the difficulty from the perspective of government is that SA has enormous disparities in wealth, and that this causes a lot of the tensions and so called xenophobia. He described so called xenophobia as tension as a result of competition over scarce resources. He then moved on to address the question, "...if we have such progressive laws as far as LGBTI rights; why are we not more active on the rest of the continent?". He responded by stating that there is a groundswell of opposition to LGBTI rights which politicians in other countries often play on to try to win themselves greater support. He indicated that for this reason, SA "shouting at" other countries will not have the desired effect of getting them to abolish anti-LGBTI laws.

He concluded by indicting that SA together with Brazil is promoting the first Sexual Orientation and Gender Identity UN Resolution, for which all regions were meant to have regional workshops. Mauritius was initially supposed to be the host of the African regional workshop, however when it was forced to withdraw the offer due to an unnamed problem, SA committed itself to hosting the workshop in early 2016. It will be convened by the South African Human Rights Commission, (SAHRC) among others, as it is believed that if it is hosted by the SA government as a government to government workshop, only South Africa, Cape Verde, Mauritius, and probably Mozambique might end up attending.

Zane Dangor



Zane stated that having the assumption that the law acts as a social norm-shaping structure is something that everyone must engage on, both locally and internationally. That locally, there is a conclusion that policy or law is not enough, that there is a need for horizontal advocacy to take place through the mobilisation of civil society, he noted. Zane indicated that internationally, SA has been quite strident, in a "soft kind of way" in engaging with the continent around LGBTI rights. Zane observed that SA civil society has been very active during the SDGs' negotiation process and called on CSOs from the region to do the same.

He argued that if civil society movements do not put pressure on governments it is going to be difficult to achieve the desired opening of borders for human mobility. He concluded by stating that

conservative groups are putting pressure on and investing in these oppressive policies and therefore, there is a need for progressive civil society in SA and in the region to support the work done by SA in promoting LGBTI rights within the international arena, so that they are not isolated as a government.

Contributions and Discussions

During the discussions, the participants and speakers raised the following issues:

- The use of justice or the law as a way to sort out problems on the continent is not enough, and therefore, there is a need for a regional linkage among activist movements and organisations advocating for human rights.
- SA must use its power on the continent to instill proper democracy and open the pathways for pressure to be put on other African governments.
- There is a need for stronger advocacy around the issue of the opening up of borders in Africa.
- Literature, art and music should be representative of lived realities and should include characters who are lesbian, gay and intersex, and promote dialogue around migration and racism.
- The psychological trauma that people often suffer when they disclose their sexual orientation as LGBTI needs to be considered; there is a deficit of psychologists who understand trauma in black people, because psychology itself tends to be ‘Western’ in how it is taught and practiced.
- It is important to know how Mozambique got to where they are now regarding LGBTI rights and to learn from that lobbying and advocacy process.
- It is important to note that the volume of refugees in SA is extremely high and that it does pose a capacity problem in the process of Home Affairs issuing documentation.

Conclusion

With some of the previously radical movements within the churches and trade unions becoming increasingly conservative and closing spaces for dialogue, it is important to open the space for dialogue and discussion. There is a need to push back on the laws that deny equality on the basis of sexual orientation. CSOs in the region need to come up with strategies on how to collectively put pressure on governments in the region to abolish repressive anti-LGBTI laws and to recognize LGBTI rights.

Rights are universal and Africans are bound by the anti-colonialism, anti-sexism, and anti-racism struggle- this needs to translate into a universal approach to human rights. The false notion that human rights’ are a western issue and that Africans are importing alien issues into the African Agenda should be dispelled. There was consensus that the forum served as one step forward towards justice, and that such engagements should continue. In order to change societal attitudes, all hands need to be on board; civil society should work together with government to come up with meaningful strategies to address these issues. Importantly, these kinds of conversations should be taken to young people, because they are the ones whose minds we need to shape for the better of all.

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.

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