



International liaison, dialogue and research

Reg no: 2006/020285/08

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Policy Dialogue Report

22 September 2022, Zoom Platform

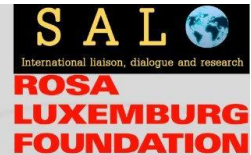
Democracy, Human Rights, and Political Participation: A Regional Perspective from the LGBTQIA+ Community

SALO REGIONAL WORKSHOP

DEMOCRACY, HUMAN RIGHTS AND POLITICAL PARTICIPATION: A REGIONAL PERSPECTIVE FROM THE LGBTQIA+ COMMUNITY

THURSDAY 22 SEPTEMBER 11:00 - 13:00 (CAT)

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EXECUTIVE
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CHAPTER 2



SHEILA
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RONIE ZUZE
INTERSEX COMMUNITY
OF ZIMBABWE TRUST



LWAZI SOMYA
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JOHN JEFFERY
DEPUTY MINISTER OF
JUSTICE &
CONSTITUTIONAL
DEVELOPMENT



PENIPENI
TSHABALALA
SA HIGHER EDUCATION
QUEER ALLIANCE



DARIO DE SOUSA
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RIGHTS



ROCHÉ KESTER
DIRECTOR, LGBTQIA+ &
OTHERS IN THE OFFICE OF
THE GAUTENG PREMIER



BUSISIWE
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SALO

Executive Summary

In partnership with the Rosa Luxemburg Foundation, SALO hosted a public multi-stakeholder dialogue titled “Democracy, Human Rights, and Political Participation: A Regional Perspective from the LGBTQIA+ Community” on 22 September 2022. This dialogue aimed to broaden the consensus and reflect on the current situation, the status quo of the LGBTQIA+ community within the region, and how to foster the change that is necessary to create inclusive governments and inclusive societies that are not only tolerant but also advance the participation of the LGBTQIA+ community. Speakers included Steve Letsike, Access Chapter 2; Sheila Barsel, Activist; Ronie Zuze, Zimbabwe Trust; Deputy Minister John Jeffery, Justice & Constitutional Development; Penipeni Tshabalala, SA Higher Education Queer Alliance; Dario De Sousa, Mozambique Association for Sexual Minority Rights; and Roche Kester, Director, LGBTQIA+ & Others in the Gauteng Premier’s Office. Members of SALO, Busisiwe Nxumalo and Lwazi Somya, presided over the dialogue, and Lily Maniom delivered the closing remarks.

Summary of Presentations

Sheila Barsel, Activist

The Formation of Lesbians and Gays Against Oppression

Sheila Barsel started her address by stating how the Gay Association developed in South Africa. The Association started as a group of gay men in Cape Town and Johannesburg and eventually became a national organisation. Initially, it was largely male and white. A few women decided to transform the organisation and Sheila Barsel was elected chair for 14 to 15 months. However, towards the end, more men joined, many of whom had a background in the liberation movement. Due to the alienation of women in the association, a split occurred and the Lesbians and Gays Against Oppression (LAGO) was formed.

LAGO held meetings to encourage people who were lesbian and gay and were closeted into being more open about their sexual orientation. At the time, 99% of lesbians were not “out” as lesbians in the women's movement. LAGO held fairs where people would sell

their wares and interact. This became a community space for people of like-mindedness to gather. She highlighted:

“So, what we did is we printed T-shirts with slogans. So the sorts of slogans of ‘no liberation without gay lesbian liberation’, and slogans of that nature. That was how we created a presence so that people within the community, the political community, some of whom were reasonably homophobic, were exposed to the fact that they were lesbians and gays, who were out and they had decided to join this UDF/ANC community.”

She went on to speak about the development of the Lesbian and Gay Charter (LGC), which is available at the Gay Lesbian Association archives at Wits University in Johannesburg. Community workshops were conducted with the purpose of soliciting input on the desired contents and format of a charter from the community members. The focus was on the lesbian and gay community and what they would like to see in a future constitution.

The National Coalition of Lesbian Gay Action (NCLGA)

The National Coalition of Lesbian Gay Action was formed in 1994 to bring together different political schools of thought into one organisation. In the initial years, the primary objective of the organisation was to secure the inclusion of a clause pertaining to sexual orientation within the Constitution. Extensive efforts were undertaken within the lesbian and gay community. Subsequently, they embarked on a months-long exercise of visiting every political party, including the reactionary ones, and engaging in discussions with them. It was through these persistent endeavors that the clause on sexual orientation was successfully incorporated into the Constitution.

She concluded that the organisation was instrumental in creating a social fabric for people who feel isolated. It was not only the legal issues that were important, but also the need to create a better life for gays and lesbians in South Africa to prevent them from being mistreated in the same way they had been mistreated before.

Ronie Zuze, Zimbabwe Trust

Ronie Zuze started their address by highlighting how the LGBTQIA+ community in Zimbabwe faces laws that criminalise same-sex conduct, which has been in place for a long time. Even though most LGBTQIA+ people in Zimbabwe have never been convicted and sent to jail for same-sex conduct, the LGBTQIA+ community has been falling victim to these laws, because the community has been politicised and used for political gain.

Organisations fighting for the LGBTQIA+ Community

Many organisations have been fighting for the rights of the LGBTQIA+ community since the early 1990s, but recently there has been an increase in the number of organisations coming out and pushing for the rights of various groups. Zuze highlighted that *“recently, LGBTQIA+ groups, trans and intersex groups, and intersex-led groups have all started to organise and fight for intersex rights.”*

The Inter-sex Movement

Zuze mentioned that in 2017, the first African intersex meeting was held in Johannesburg, South Africa. This meeting, organised by Iranti, saw the formation of the African Intersex Movement. The meeting encouraged many intersex activists from around Africa, especially in Zimbabwe, to start intersex activism due to the repressive laws and non-conducive environment to their existence. The second African intersex meeting took place in Kenya, where intersex activists organised themselves and supported each other.

In 2018, the Intersex Community of Zimbabwe was formed, which has been raising awareness on intersex issues, educating and informing people, and advocating for the rights of intersex people. Zuze concluded that much work had been done to engage with policymakers, educate and inform various sectors, form partnerships and alliances, and put up strategies to push for the decriminalisation of same-sex conduct and anti-LGBTQIA+ laws:

“We are now in the pre-election period, where policymakers are warming up to these conversations and trying to understand who we are and what we are all about.”

Mpho Buntse, Access Chapter 2

Mpho Buntse explained that the after-effects of apartheid laws are causing problems for the human rights of the LGBTQIA+ community in Africa today. While some countries are making progress towards recognising and protecting LGBTQIA+ communities, more needs to be done to support the same efforts throughout Africa and in diaspora communities:

“The last couple of years have seen great progress regarding the recognition, protection, and acceptance of LGBTQIA+ communities, particularly in countries such as Botswana, Mozambique, and Angola.”

Discrimination against the LGBTQIA+ Community

Discrimination against LGBTQIA+ individuals in many African countries is still prevalent, including in faith communities, leadership structures, and traditional authorities. Efforts are being made by activists, scholars, civil society, and human rights organisations to challenge the misconception that homosexuality is un-African. However, this discrimination has resulted in the marginalisation and disenfranchisement of LGBTQIA+ people in Africa.

Buntse explained that the African Commission on Human Rights has denounced the increasing violence and human rights violations against the LGBTQIA+ community by both state and non-state actors. It has called for all African states that are party to the African Charter on Human and People's Rights to end all acts of violence and abuse against the LGBTQIA+ community.

Furthermore, in addition to the obligations set forth in the Charter, states have an obligation to uphold their commitments under international law and treaties. For instance, the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment obligates member states to ensure that torture is prohibited and criminalised under various domestic laws. However, some countries such as Ghana, Botswana and Malawi, do not classify torture as a separate criminal offense, and it is treated as an ordinary crime in these countries. In contrast, other countries like Angola, the Democratic Republic of Congo, Morocco, Mozambique, Kenya, South Africa, and Uganda have explicitly criminalised torture as a separate offense.

He concluded that South Africa serves as an example for the protection and recognition of sexual orientation, providing historical lessons for the rest of the SADC and beyond. *“The country’s eagerness to offer help to neighbouring countries must be considered through an intersectional lens,”* he highlighted.

Penipeni Tshabalala, SA Higher Education Queer Alliance

Penipeni Tshabalala started their presentation by mentioning that South Africa is recognised as a leader in promoting equal rights for sexual and gender minorities. Its Constitution, specifically Section 9, prohibits discrimination based on sexual orientation, gender, and sex. South Africa was the first country to introduce this constitutional protection against sexual orientation-based discrimination. The country has also extended legal protection to various gender identities. They mention that there are still obstacles to overcome; recent court rulings have applied constitutional protections to cases involving harassment against transgender individuals.

Change of Gender

They highlighted the binary gender system in the South African society that forces transgender individuals to conform to the gender on their ID, leading to discriminatory environments. Despite constitutional protection, there is still a need for societal change regarding the treatment of transgender individuals:

“The Alteration of Sex Description and Sex Status Act 49 of 2003 allows transgender South Africans to change their legal gender markers. However, the strict requirements of the law impose barriers on legal gender recognition, leaving many transgender women without accurate identity documents.”

The Sex Description and Sex Status Act 49 of 2003 mandates that medical or surgical gender reassignment procedures, including hormone therapy, have to be undergone before applying for a gender marker change. A birth certificate and endorsements from two medical professionals must accompany the application.

Transsexual rights

They further argued that transsexual rights are still being abused and violated in South Africa due to a lack of access to information.

“To protect these rights, all departments in the legislative or national system of South Africa should be involved, not just the Constitution. Practical allyship and the participation of everyone are needed to ensure that transsexual rights are protected.”

They concluded that one should avoid making assumptions about sexual orientation, refrain from making jokes about the LGBTQIA+ community, foster an atmosphere of acceptance, educate oneself on LGBTQIA+ issues, and actively participate in challenging prejudice. The LGBTQIA+ community needs to be represented in political movements and all movements, as these struggles are everywhere.

Dario De Sousa, Mozambique Association for Sexual Minority Rights

Dario Sousa started his presentation by sharing a study from Mozambique. The study looked at the knowledge, attitudes, and practices of politicians and political parties towards homosexuality. The study included various dimensions and indicators, including knowledge of LGBTQIA+ concepts and rights, attitudes towards equal rights and laws related to homosexuality and sex discrimination, and participation in campaigns or actions related to homosexuality. The study aimed to understand the levels of knowledge, attitudes, and practices among lawmakers and political party members in Mozambique:

“The study indicated poor performance in three areas: knowledge, attitudes, and practice. The discussion around attitudes reveals that public acceptance of homosexuality is seen as normal, but same-sex marriage is considered too much.”

Roche Kester, Gauteng Premier's Office

Roche Kester's opening remarks highlighted that the state needs to play a role in human rights and LGBTQIA+ rights and that there is a lack of education about the LGBTQIA+ community in South Africa.

Sensitisation Training & Community Engagements

To address this issue, sensitisation training should be implemented within government structures, and community dialogue engagements should be conducted to unpack the issues and make visible the individuals that exist within the context and in the regions:

“There should be community dialogue[s] to unpack the issues and make visible the individuals that exist within the context and in the regions.”

The Department of Justice

The Department of Justice has been working to promote the visibility of the LGBTQIA+ community in the province through initiatives such as the International Day Against Homophobia, Biphobia, and Transphobia, as well as Transgender Day. The state has also acknowledged Lesbian Visibility Day and TransVisibility Day in terms of programming, such as in the 16 Days of Activism for no Violence Against Women and Children. She highlighted:

“To ensure that these individuals are in our society and have the right to be respected, it is important to have a specific strategy for LGBTQIA+ rights, both on a national and provincial level and to incorporate LGBTQIA+ programming into each governmental department.”

South African Legislation, Act 49

South Africa's laws and policies for the LGBTQIA+ community are progressive, but there are still gaps. Act 49 is mentioned as not allowing individuals to self-identify as trans or intersex. She explained that *“research is being done to use best practices from other countries.”* It is important to consider individuals in other SADC countries and learn from their successes. The roles of the state and civil society organisations are highlighted, with Act 49 advocating for legal gender recognition and the education department's social inclusion guidelines. International funding is essential to keep these services alive: *“The state should work with civil society organisations for a broader and more effective LGBTQIA+ service delivery.”*

She went on to speak about the Department of Justice and Department of Home Affairs, which are key departments in Gauteng that are working to promote LGBTQIA+ rights, such as social development, community safety, and education. However, the Z83 forms of government have limited options for males and females, this is a discount for those who identify as non-binary or intersex.

Structural Issues

Roche highlighted that:

“In Gauteng, there is still a long way to go in terms of education buy-in from individuals in government departments, specific programming and strategies that speak to service delivery, budgeting thereof, and engaging the community on best practices in terms of service delivery.”

Roche closed by stating that South Africa has the potential to champion LGBTQIA+ rights by having a portfolio committee for them at the departmental, municipal, provincial, and national levels. This would be a prototype for the rest of the country and help to distinguish and be deliberate in its programming and planning.

John Jeffery, Department of Justice and Constitutional Development

Deputy Minister John Jeffrey opened his address by explaining that legal reforms have been passed on issues of sexual orientation, but the implementation of those laws, public servants' attitudes, and society's attitudes on those issues remain to be addressed.

Possibilities of a Gender Marker for the LGBTQIA+ Community

He mentioned that gender identity, gender expression, and sex characteristics are the next areas that the national government and civil society are working on. Home Affairs is debating whether they should have a gender marker in their ID number, reserve two numbers for gender-neutral people, or do away with the gender marker altogether. There is a concern that if they do not have the gender marker in their ID number, they will be unable to run programs that advance women. He highlighted:

“If Home Affairs opts for a no-gender marker, then the Sex Description Act may not need an alteration. Gender identity, gender expression, and sexual characteristics are the areas that still need to be addressed. Two gender-neutral laws have been passed, the Cyber Crimes Act and the Domestic Violence Act. The Cyber Crimes Act is gender-neutral, and the Domestic Violence Act is gender-neutral.”

Issues of Violence

He went on to speak about how the National Task Team (NTT) was set up in 2013 to address the issue of violence against the LGBTQIA+ community. One of the issues that put the government in a more difficult situation is the lack of representation from civil society. Several government departments, including the police, have tried to develop a protocol on what happens when people of different sexual orientations, gender identities, and sex characteristics are arrested and have to be housed in police cells while they wait for their first appearance in court:

“There has been a lot of training on gender-based violence issues, but some police people, particularly policemen, still have problems in the way they treat women with gender-based violence issues, wanting them to return to their male partners.”

South African Political Parties Supporting the LGBTQIA+ Community

South Africa is relatively unique in the world in that most of its political parties including its larger opposition are very supportive of the rights of people of different sexual orientations, gender identities, expressions, and sex characteristics. This includes the ANC, Democratic Alliance, Economic Freedom Fighters, and the Inkatha Freedom Party. South Africa has also co-sponsored the first UN resolution on sexual orientation and gender identity and has been firm in its support of the UN Human Rights Council and the United Nations on these issues. Additionally, South Africa has joined an informal lobby group on LGBTQIA+ rights at the United Nations.

Questions and Contributions from Participants

Sanele Putini: *“We as queer people want to be included; we want people to know who we are and make our stance in the world so that we also have a say and people take us seriously. How do we do that if we, as queer people, still practice heterosexual practices?”*

Question from the chat

Jackie: *“What have you stepped into that is groundbreaking in terms of the Gauteng Premier’s Office, and how can we also ensure that we have a desk in the Premier’s Office at the level of provinces?”*

Ineke Stemmet: *“It seems that the beginning of the LGBTQIA+ movement in South Africa was largely lesbians and gays that were involved and represented; was this exclusive of trans, intersex, bi, etc. persons, and did this become more inclusive with time?”*

Lily Manoim: *“I would like to know from the speakers and the participants in other countries outside of South Africa how the other political struggles [and] movements relate to the LGBTQIA+ struggle?”*

Comments on the chat

Jasmine Opperman: *“So unique that a person compared to gender reassignment surgery six years ago still struggles to change the ID document.”*

Ambassador Carmen Smidt: *“It would be important to bring the broader society and communities [together] to have these conversations, as well as NGOs across the borders in the continent to create a broader advocacy.”*

Responses from the Panel

John Jeffery answered a question about a person who struggled with their ID application.

“Jasmine's question about the person who had surgery and is still battling after six years: can we get the details of that person? Irantí has organised days with the Department of Home Affairs to assist transgender and intersex people with ID book applications. It is important to get the details of any government official who is being homophobic and to report them. If you cannot get their name, record the time you were there at the clinic, the Home Affairs office, or the police station so that person can be identified. Training is important, and it is only if we start holding people accountable that we are going to stamp this out in the public service.”

Roche Kester answered a question about how the LGBTQIA+ directorate came about in Gauteng.

“Civil society organisations have advocated for a provincial office for fourteen years, and the Premier's Office is considered progressive. This is because the query has been asked for fourteen years.”

Roche Kester made suggestions:

- *“To look at the existing programming in other provinces to see where LGBTQIA+ programs can be added. For example, there is a focus on people with disabilities, youth, and gender in Gauteng, and the Transformation Unit is in the Office of the Gauteng Premier.”*
- *“Activists should write to the Premier to get buy-in from civil society organisations and engage with the opinions of each province.”*

Sheila Barsel answered a question about whether lesbians and gays were exclusive or included bisexuals and transgender people.

“We were not exclusive to lesbians and gays but focused on getting a clause in the Constitution that would encompass everyone. There were some people in the group who were bisexual, but transgender issues were not at the forefront of the community's effects. We were careful to ensure that there was a clause in the Constitution where simple discussions about sexual orientation would encompass anyone who was not heterosexual.”

Ronie Zuze answered a question about how other political struggles and movements relate to the LGBTQI+ struggle.

“I will speak in the context of trans and intersex people, especially here in Zimbabwe. Given the period that we are in, which is the post-election period of our general elections, we have noticed that most trans and intersex people are faced with challenges in accessing documentation. It is very difficult for most trans and intersex people to even register to vote, meaning that according to Section 67 of the Constitution of Zimbabwe, every Zimbabwean citizen has the right to vote, but his right to vote is also taken away by the lack of legal recognition by the Zimbabwean laws. We have seen that even in additional processes that require additional documentation and funds, intersex people struggle to access such rights. In that manner, you see that these are things that are not being looked into or considered by even the government of Zimbabwe because they still take everything and still criminalise everyone using these laws that have been mostly fueled by homophobic attacks from our former leaders.”

Conclusion

This dialogue brought together speakers from civil society, the student movement, and LGBTQIA+ organisations to highlight issues that affect the LGBTQIA+ community. The dialogue aimed to create a space in which stakeholders could become better informed, share perspectives, and contribute to building synergies and consensus for strategies relating to LGBTQIA+ issues. The common theme among all the speakers was how the struggle for queer rights is deeply connected to the struggle for political and economic freedom for all and that there is a need for constitutional legal rights and recognition. There is a need for government cooperation in terms of violence, increased representation, transnational solidarity, and ongoing public dialogues to discuss these issues.

The analysis and recommendations included in this Policy 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 Rosa Luxemburg Foundation
for their direct support for this event*

