

South

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The legal position of lesbians in South Africa is unique in the world today. Currently, South Africa is the only country to have a constitution that explicitly affords lesbians protection against discrimination.

The Constitution of the Republic of South Africa,¹ which is interim in nature, includes a justiciable Charter of Fundamental Rights, which expressly prohibits direct or indirect discrimination on the basis of sexual orientation. The pertinent provision in the Charter of Fundamental Rights, Section 8, guarantees equality before the law and equal protection of the law. It also protects persons against discrimination on "one or more of the following grounds: race, gender, ethnic or social origin, color, sexual orientation, age, disability, religion, conscience, belief, culture or language."² Despite this provision, lesbians are still largely invisible in South African society and face discrimination and oppression in their everyday lives.

LESBIANS AND THE LAW

There are two serious weaknesses in the legal protection currently enjoyed by South African lesbians. The first is that the constitution is of recent vintage and laws and practices that discriminate against lesbians remain valid until challenged and defeated in court, or until the government abolishes the provisions at issue. No such litigation has occurred to date; however, the South African Department of Justice is currently examining some of the relevant legislation.

The second weakness in this legal protection is that the country is currently rewriting the constitution, which had been designed to be an interim one until a democratically representative body could be elected to write a final text. The process of drafting the permanent constitution has just begun. Among other things, it involves the taking of submissions on all aspects of the constitution from all those who are interested. This includes political parties, institutions, organizations, and individuals. The Constitutional Assembly is making a special effort to involve even those people who by virtue of their poor education or other factors are generally excluded from such debates.

The lesbian community in South Africa is specifically seeking to influence the constitution-making process so that it can retain the explicit protection against discrimination on the basis of sexual orientation in the equality clause of the constitution. In this effort South African lesbians are represented by a new national body, The National Coalition for Gay and Lesbian Equality (NCGLE), as well as regional coalitions in four of the nine provinces in the country. The NCGLE was mandated by its 52 constituent organizations to appoint a lobbyist whose specific task it is to lobby influential individuals and organizations both inside and outside of Parliament. The regional coalitions are also expected to

lobby in their respective regions. It is the aim of the NCGLE to have a coordinated national strategy to ensure the retention of the sexual orientation clause.

The second aim of the NCGLE is to have old discriminatory legislation removed from the statute books. There are few laws predating the constitution that influence the lives of lesbians directly. Although male same-sex conduct was regarded as a criminal offense³, the same sanctions did not apply to lesbians. The reason for this probably lies in South Africa's British colonial past and the Victorian notion that women simply did not "do such things." Despite this historic omission, there are some laws that discriminate against lesbians specifically. In 1988, it became a criminal offense for a woman to engage in sexual acts with a girl under the age of 19⁴ while the heterosexual age of consent is 16. This particular piece of legislation contradicts the provisions of the new constitution and is one of the issues currently being examined by members of the Department of Justice.

Lesbians face additional discrimination in the context of donor insemination. Under the terms of the Human Tissue Act of 1983, only women who are married may benefit from this procedure.⁵ Currently, there is lobbying by the Lesbian Health Group to change the Act to remove this restriction so that it no longer discriminates against all single women and against lesbians—regardless of whether or not they are in long-term partnerships. Additionally, attention was drawn to the matter in a conference on Reproductive Health in June 1994.

Finally, we must point out that although the protection offered to lesbians in terms of the new constitution is all-encompassing, it is not perfect. Unfortunately, the Charter of Fundamental Rights is only binding on organs of the state. This is a serious gap in the law. It means that institutions, organizations, and businesses that are not organs of the state may discriminate against lesbians and there is no explicit legal protection against such "private" discrimination. The same applies to individuals acting in their private

capacity. Various organizations are making submissions to the Constitutional Assembly to extend the application of fundamental rights enshrined in the constitution to all institutions, organizations, businesses, and individuals.

PARENTING

Natural and Adoptive

Whatever the method of conception, by South African law, a child born to a single woman is illegitimate. Fortunately, with only a few narrow exceptions (which affect paternity and not maternity rights), the legal position of legitimate and illegitimate children is now the same.

The Child Adoption Act⁶ governs adoption. This Act contains no explicit prohibition against lesbian adoption. In fact, it could be argued that Section 17 of the Act, which refers to an "unmarried person" as one of the categories of persons who can adopt a child, includes lesbians. Unfortunately, although the law does not forbid lesbians to adopt, lesbians often do not attempt it because of the perceived discriminatory attitudes and practices of state departments responsible for adoption. Many lesbians have pretended to be heterosexual to adopt and have suffered considerable emotional stress as a result.

One lesbian—a white Cape Town resident who adopted a Black child—has described the precarious emotional and legal position in which the adoption placed her, her partner of 13 years, and their daughter, Jessy:

For the three years in which we have raised and loved Jessy, we have lived in fear of having the adoption reversed should our sexual orientation be discovered. This is an inhuman state of affairs. We are hoping that the final constitution will protect us and our child.

Because I had to adopt as a single parent, Kerry has no legal protection. Legally and emotionally she is in a wilderness. She has loved, supported and cared for our

child from birth, yet has no legal hold over her whatsoever. The laws should be amended to take cognizance of the existence of alternative families such as ours.

Socially all three of us are in a wilderness—society has managed to ignore and ostracize lesbians and gays, and where does this leave a minority-within-a-minority, such as a lesbian family? I would like to see social education programmes which recognise and help to legitimize all forms of alternative families.⁷

Beyond the ambit of the law and the courts, parenting by lesbians is a controversial issue in South Africa. It causes considerable disquiet among many heterosexuals, and lesbian mothers often have to contend with family members who threaten to have their children taken away unless they change their "lifestyle."⁸ Such family members tend to subscribe to all the myths concerning the unfitness of lesbians and gay men as parents. These views are beyond legislation of any kind.

Custody

Historically in South Africa, it has been almost impossible for openly lesbian mothers to retain custody of their children after divorce. Most end up with only access rights to their children. This obviously causes great hardship. The position of lesbian mothers who divorce is aggravated by the distinction in South African law between guardianship (legal control) and custody (actual caregiving). Even where women are granted custody of their children on divorce, the notoriously conservative courts usually grant guardianship to their fathers.

HEALTH CARE

Psychological Health

Some lesbians experience little or no difficulty in coming

to terms with their sexuality. Unfortunately, this is not always the case, and many others experience internal doubt, anxiety, and trauma. The psychological aspect of the position of lesbians in South Africa is a cause for concern. It is precisely in this respect that many lesbians are vulnerable. Because lesbians are an oppressed minority, some tend to be very susceptible to loneliness and isolation, confusion, and shame. This is particularly so in the case of "closeted" lesbians who have to be constantly vigilant in case their friends, family, or co-workers discover their secret.

Many lesbians are financially unable to seek psychological counseling. Working-class lesbians in general and many Black lesbians are also not likely to seek counseling as it is not regarded as culturally appropriate to discuss problems with psychologists, psychiatrists, or counselors. Added to this there is fear of being exposed as a lesbian and consequently seen as abnormal. From discussions with lesbians it emerged that some have very low self-esteem and generally feel isolated in the communities in which they live. This results in lesbians socializing among themselves and often involves consuming large quantities of alcohol.⁹ There are no safe spaces for working-class lesbians to go. At a recent retreat for Black working-class lesbians organized by the Association for Bisexuals, Gays and Lesbians (ABIGALE), Black lesbians in their forties commented that it was the first time in their lives that they had spent time not only socializing with other lesbians but talking about what it means to be a lesbian and a woman.¹⁰ And for those who do seek help the problem is not necessarily over. Until fairly recently, several psychology faculties at universities regarded homosexuality as an abnormality. It can therefore be difficult for lesbians to find good mental health care even when they know it is an option.

However, the picture is not all negative. As Julia Nicol of The Organization for Lesbian and Gay Action (OLGA) points out, "The courage and self-awareness required to come out may make the lesbian individual a more confident and more

aware person." She adds that "...influenced by their own experiences of oppression [lesbians] are in the vanguard of movements for progressive societal change in numbers far outweighing their proportion in the population. " There are many lesbians in South Africa who fit these descriptions.

Physical Health

In terms of their physical health needs, lesbians often find themselves in a difficult situation. Health workers usually use heterosexuality as their point of departure in their thinking and in their face-to-face interaction with clients. Many lesbians remain "closeted" when they consult health workers. This can be detrimental to their health, especially if they do not reveal pertinent facts. Those who do "come out" may have to face negative attitudes from health workers. In addition, many lesbians do not have the same medical aid benefits as married heterosexuals because their partnerships are not recognized.

There are, however, signs of change. At a National Health Policy Conference in December 1994, a proposal concerning lesbian health issues was drafted by a group of about 70 women, most of whom were not lesbian. The proposal covers the above problems and others that are not uniquely South African, such as the reported high incidence of cervical cancer among lesbians. It also makes strong recommendations regarding the training of health workers, especially regarding the adoption of positive attitudes toward homosexuality. This policy document has been submitted to the Department of Health, which is currently drafting a new health policy for the nation.

LESBIANS IN SOCIETY

In addition to the homophobia that lesbians face in many parts of the world, several aspects of South African life have particular impact on the lives of South African lesbians.

These are:

- The commonly held belief that lesbians are stane-i.e., have both male and female sexual organs.
- The belief held by some people that homosexuality is un-African, that it is a European phenomenon or an import of European society.
- Lack of mobility, which keeps lesbians in rural areas or small towns, and working-class lesbians in urban centers from accessing the support systems that do exist.
- Pressure to marry, especially in more traditional communities such as the Muslim community.
- Peer pressure, particularly on young lesbians, to prove their "normality" by having sex with men.
- Physical harassment. Lesbians in the townships are scared to come out because there are gangs that go out in groups and rape women. One gang in particular, the Jackrollers, targets lesbians. In the words of one young lesbian, "...and when they catch one [a lesbian] they say 'We'll put you right.'"¹¹
- Invisibility. The lesbian literature that is available is predominately western, white, concerned with middle-class issues, and urban. There is no indigenous lesbian literature available.
- Internal divisions. The lesbian community is characterized by the same divisions of race and class that characterize South African society as a whole.¹²

In addition, Tanya Chan-Sam of the Lesbian Forum recently highlighted the following societal pressures that affect Black lesbians specifically:

- Bars, clubs, and organizations are usually found in white areas and are frequented predominantly by white lesbians.

- Many Black gay men resist sharing skills with lesbians.
- Many Black lesbians are forced through economic necessity to live with their parents. As a result

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they have little privacy to explore their sexual identity.

- There are few strong Black female role models in the history books, let alone lesbian ones.¹³

These beliefs and restraints can have a profound and destructive impact on the lives of lesbians. A particularly acute testament to this reality is provided by one woman who describes her life after "coming out" to her family and community:

Lots of attempts have been made to rape and assault me because of my sexual orientation. Insults have become the norm of the day. Even when I was going to praise my God for giving me life, churchgoers made insulting remarks. My family could not deal with the remarks they had to put up with because of the "dirty child" they keep.

Being silent about this, especially to the public protectors, has made it even worse. Many culprits have gotten away with crimes, and many women have suffered and died as a result of them. I do not want to be added to those numbers.

I would not like to see a situation where tomorrow,

when I go looking for a job with the appropriate qualifications, I am denied the job because I am a "dyke." I want to go out and enjoy my youth without fearing being raped, assaulted and insulted. I want to be proud of who I am and for my family to be proud to talk about me without fearing that the issue of my lesbianism will come up.¹⁴

LESBIAN ACTIVISM

Lesbian activism in South Africa dates back to the early 1970s. Influenced by feminist activism and the gay liberation movement that emerged in Europe and North America in that period, white lesbians became involved in setting up feminist organizations. "For many women these were the first places they felt free to articulate feelings of attraction to other women and to consider what the political implications of this might be."¹⁵

South Africa's first lesbian organization, Lesbians in Love and Compromising Situations (LILACS), was formed in Cape Town in 1983. LILACS was disbanded in 1985 but in its wake followed a number of new organizations. Lesbians and Gays Against Oppression (LAGO) was founded in 1987, and later became the Organisation for Lesbian and Gay Activists (OLGA). OLGA was an affiliate of the anti-apartheid United Democratic Front (UDF) until 1991 when the UDF disbanded. OLGA changed its name to the Organisation for Lesbian and Gay Action in 1991, and retained its acronym. It is now defunct.

Black men and women had been involved with LAGO from the organization's founding. The early 1990s saw a dramatic increase in Black lesbian and gay activism, which led to the formation of groups such as the Gay and Lesbian Organisation of the Witwatersrand (GLOW) and the Association of Bisexuals, Gays and Lesbians (ABIGALE).

South African lesbians are active within a broad range of organizations. There are political groups, social groups, organizations for sport and leisure activities, counseling ser-

vices, AIDS-related organizations, Christian groups, Jewish groups, Alcoholics Anonymous groups, media groups, and professional groups. While these groups contain both men and women, there are also several organizations specifically for women: the Lesbian Forum in Johannesburg, Sunday's Women in Durban, and two groups in Cape Town—ABI-GALE's Lesbian and Bisexual Women's Caucus and the Lesbian Action Project (LAP). An important point to make in relation to lesbian activism is that while lesbian issues have often remained invisible, many lesbians have been at the forefront of women's struggles in this country.

THE "L" WORD

In South African law it is a civil offense to defame someone. Being called a lesbian has been interpreted by the South African courts to be defamatory—unless, of course, the woman in question is in fact a lesbian. The term is considered to be an insult which diminishes a woman's good name and reputation in the eyes of what the courts refer to as "right thinking people." In 1981, a woman fought and won just such a case.¹⁶

It is debatable whether this judgment would still form a precedent in South African law, given the fact that it is inconsistent with the new protection afforded to lesbians in the constitution. Nevertheless, the existence of such judgments can be taken as an indicator of the attitudes that still prevail in South African society, and the work that will need to be done by lesbians whether they enjoy constitutional protection or not.

The fight is now on to retain the constitutional prohibition on discrimination based on sexual orientation. Already one political party, the African Christian Democratic Party, has stated that it regards homosexuality as contrary to "the will of God and African culture" and has made the abolition of lesbian and gay rights the main theme of its constitutional submissions. If the sexual orientation clause can be retained

in the face of such opposition, South Africa may indeed be able to show other nations the way forward regarding lesbian and gay rights.

NOTES

- 1 Act No. 200 of 1993.
- 2 Section 8 (2).
- 3 Sexual Offences Act (No. 23 of 1957).
- 4 Section 14(3)(2) of the 1988 amendment to the Sexual Offences Act (No. 23 of 1957). The age of consent for gay men is also 19.
- 5 Act No. 65 of 1983.
- 6 Act No. 74 of 1983.
- 7 Personal testimonial by Josephine Stable (the author has used pseudonyms to protect her family), solicited by Karin Koen, spring 1995.
- 8 Interview with Sandra Adams by Karin Koen on 19 January 1995, in Cape Town.
- 9 Discussions by Karin Koen with lesbians on the Cape Flats on 4 and 11 February 1995.
- 10 From the ABIGALE Lesbian and Bisexual Women's Camp, 20 to 22 January 1995. We would like to thank the ABIGALE Caucus for permission to use their personal information for this report.
- 11 Bongie in Tanya Chan Sam, "Five Women: Black Lesbian Life on the Reef" in M. Gevisser and E. Cameron, eds., *Defiant Desire: Gay and Lesbian Lives in South Africa* Johannesburg: Raven Press, 1994, p. 147.
- 12 Bronwynne Perreira. "Lesbians in the Eastern Cape—A Report" (1995), p.1.
- 13 It is important to point out that there are in fact no female role models of any description in any South African history textbook.
- 14 Interview with Sylvia Vilakazi by Karin Koen on 26 May 1995, in Cape Town.
- 15 M. Armour and S. Lapinsky, "Lesbians in Love and Compromising Situations" in Gevisser and Cameron, eds., op. cit., p. 247.
- 16 Edwin Cameron, "Unapprehended felons': Gays and lesbians and the law in South Africa," in Gevisser and Cameron, eds.,