

DRAFT OUTLINE
of
GENERAL MOTIVATING DOCUMENT
for
OLGA'S CONSTITUTIONAL PROPOSALS

PLEASE NOTE :

OLGA's proposals will be divided into :-

- * A general motivating document (as follows).
- * Our actual proposals, with each clause or section followed by a specific motivation.

1. Introduction2. Process

(a) Response to :

- * ANC call for general feedback on Constitutional Guidelines.
- * Specific call from cde Albie Sachs for feedback from progressive lesbian and gay organisations.
- (b) Briefly where OLGA comes from as a progressive organisation (UDF-affiliated).
- (c) Explaining process of how OLGA proposals evolved and who we have consulted with.
- (d) See this motivation as a contribution to an ongoing discourse, and as feeding into debates on women, the family, group rights\interests etc.
- (e) Importance of raising lesbian and gay issues openly, also within the ANC : a more developed response to previous supportive statements by cde Thabo Mbeki and cde Frene Ginwala.

3. Motivation

- (a) Terminology - explaining the use of specific words, eg sexual orientation, lesbian and gay people, heterosexism, homophobia, coming out, oppression etc.
- (b) Comparative :
- * The historical and contemporary context of lesbian and gay oppression, eg Russia, Germany, Cuba, Argentina.
- * Useful enlightened models, eg Sweden, Norway, Netherlands, Denmark, France.

* Equal relevance to oppression in Africa, yet no legal protection, eg Zimbabwe, Namibia - the ANC needs to take a lead.

(c) Explanation of range of lesbians and gays in SA context, cutting across barriers of race, language, culture, social or economic status - because of existing homophobia and discrimination, seeking equal rights and protection of interests, not privileges.

(d) SA History :

* Lesbian and gay organisations in SA, particularly in the 1980's.

* Development of OLGA within this - the potential for drawing a broader lesbian and gay constituency into the struggle and developing a lesbian and gay sector. Concurrent aim to create and ensure conditions such that lesbian and gay activists feel safe about being open about their sexual orientation within their organisations (including the ANC) and thus participate freely at all levels.

(e) Need to recognise and legitimise a variety of lifestyles and living units - not a question of attacking traditional family structures.

(f) Need to understand that 'the personal is political' - submit that lesbian or gay issue should not be simply relegated to being a private issue, precisely because of public discrimination re housing, employment, insurance, succession etc, and in general attitudes. Essential for political direction to be given to change the status quo.

(g) Some evidence of changing attitudes and greater tolerance in SA - specific reference to study of community attitudes to gay people.

4. Conclusion

- * Need not only for constitutional protection, including mention in Bill of Rights and Lesbian and Gay Charter, but also proactive legislation, possibly in the context of new general anti-discrimination laws.
- * Concurrent need for public education and awareness-raising within organisations in order to change attitudes on the ground.
- * Proposals submitted in a comradely spirit because of our desire to build a free and democratic SA in which lesbian and gay people are treated equally and with respect.
- * We welcome feedback, comments and suggestions on our proposals and the way forward.

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CHARTER OF LESBIAN AND GAY RIGHTS (DRAFT VERSION)

From ORGANISATION OF LESBIAN AND GAY ACTIVISTS, 90.05.11

The headed sections that follow are in no particular order.

EMPLOYMENT

1. Discrimination against lesbian and gay people in the workplace shall be illegal with regard to recruitment, dismissal, promotion, and conditions of work.
2. Lesbian and gay employees shall have the right to be out of the closet in the workplace. This right shall apply equally to school teachers and others who work with the young.
3. Disciplinary action shall be applicable against employees who victimize colleagues because they are known to be gay or lesbian.
4. Conditions of service shall allow for the inclusion of Registered Partners (see no. 10) of lesbian and gay employees in pension schemes, compassionate leave, and co-parenting leave.

EDUCATION

5. It shall be illegal for negative or derogatory attitudes towards homosexuality and/or lesbian and gay people to be taught.
6. Education about sexuality, including homosexuality, shall be included in curricula. Teachers shall be qualified to provide education regarding homosexuality.
7. Pupils shall not be discriminated against because of being lesbian or gay.
8. There shall be openly understood procedures for complaints by pupils regarding discrimination on the basis of sexual orientation.

HOUSING

9. No lesbian/gay individual or couple shall be discriminated against with regard to housing on the grounds of their sexual orientation.

RELATIONSHIPS AND FAMILIES

10. There shall be provision for two persons of the same gender to enter into a Registered Partnership, which shall confer all the legal rights and liabilities of the marriage partnership. This shall include rights and liabilities regarding taxation, inheritance, pension, insurance, and next-of-kin status.
11. Lesbian and gay people shall have the right to produce and parent children. This shall apply whether they are single or involved in a couple relationship.
12. Lesbian/gay sexual orientation shall not be admissible as a factor in decisions regarding eligibility for custody, adoption, or fostering of children.

HEALTH AND WELFARE

13. Health and welfare workers shall be educated with regard to the particular problems faced by lesbian and gay people owing to the homophobic nature of our society; and they shall actively seek to combat homophobia.

14. Mental health problems in lesbian and gay people shall not automatically be assumed to be a result of their sexual orientation.

MEDIA

15. The government shall guarantee the free dissemination of newspapers, magazines and works of the imagination within South Africa of lesbian and gay people.

16. Censorship of publications dealing with homosexual sexual acts shall be enforced in parity with publications dealing with heterosexual sexual acts.

PRISONS

17. There shall be special protection for lesbian and gay people in prisons in respect of rape and other forms of victimisation.

IMMIGRATION

18. Sexual orientation shall not be a factor in decision-making regarding applications for immigration.

19. The government shall grant refugee status to gay and lesbian people who flee from countries where homosexuality is persecuted. Similarly, gay and lesbian people who do not wish to return to their own country because of fear of persecution shall be allowed to stay in South Africa.

EXISTING DISCRIMINATORY LEGISLATION

20. The current legislation which outlaws gay and lesbian behaviour shall be repealed, in respect of both the criminal and the common law.

21. The criminal offence of child molestation shall be redefined such that both the molester and the victim can be of either gender.

22. The criminal offence of child molestation shall be redefined such that the age of consent is the same whether the interaction is heterosexual or homosexual in nature.

23. All laws shall be reviewed in the light of the demands of this Charter.

24. Provision shall be made for legal redress in cases where persons believe they may have been discriminated against owing to lesbian or gay sexual orientation. Lesbian and gay people shall be represented in judicial fora.

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