

DRAFT of OLGA'S PROPOSALS
on
THE ANC CONSTITUTIONAL GUIDELINES

PLEASE NOTE :

In addition to the comments made in the General Motivating Document (as above), specific motivation will in due course be given for each clause or section of the proposals as below.

1. PREAMBLE.

* Paragraph 6 to be amended to read as follows :

" The Constitution must give firm protection to the fundamental human rights of all citizens. There shall be equal rights for all individuals, irrespective of race, colour, creed, gender, sexual orientation, economic or social status, or disability. In addition, it requires the entrenching of equal cultural, linguistic and religious rights for all."

2. BILL of RIGHTS and AFFIRMATIVE ACTION.

* Clause "h" to be amended as follows :

" The Constitution shall include a Bill of Rights based on the Freedom Charter. Such a Bill of Rights shall guarantee the fundamental human rights of all citizens, irrespective of race, colour, creed, gender, sexual orientation, social or economic status, or disability, and shall provide appropriate mechanisms for their protection and enforcement."

* Clause "k" to be amended as follows (should it be decided to retain this clause at all) :

" All citizens adversely affected by the advocacy or practice of racism, sexism, heterosexism, fascism, nazism or the incitement of ethnic or regional exclusiveness, shall have recourse to legal protection. "

3. LESBIAN and GAY CLAUSE.

* Suggested new clause "y" (International Clause becomes "z"), headed "Lesbian and Gay People" :

" A Charter protecting the rights of lesbian and gay people shall be incorporated into the Constitution."

4. PRINCIPLES of STATE POLICY.

* Following the example of the Namibian Constitution, should it be decided to have a separate chapter headed "Principles of State Policy", it is suggested that the following be included after the introductory paragraph (as below) :

" The State shall actively promote and maintain the welfare of the people by adopting, inter alia, policies aimed at the following :

...
...

... enabling lesbian and gay people to participate openly in all spheres of society by repealing all legislation discriminating against lesbian and gay people, and by enacting legislation to ensure non-discrimination against lesbian and gay people."

5. LESBIAN and GAY CHARTER.

* It is suggested that a Charter headed "Lesbian and Gay Charter" be incorporated as an Annexure to the Constitution, together with other possible Charters (eg workers, women), after the following introductory paragraph :

" The rights of the following groups, which are recognised as requiring specific protection, are given further definition :
... (Annexure A)
... (Annexure B)
... Lesbian and Gay People (Annexure C) ..."

(Please see draft of OLGA's proposed Lesbian and Gay Charter attached)

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... Lesbian and Gay People (Annexure C) ..."

(Please see draft of OLGA's proposed Lesbian and Gay Charter attached)

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.
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1. Introduction

2. 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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