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FAX TO: CODESA WORKING GROUP 2 ON GENERAL CONSTITUTIONAL  
PRINCIPLES C/O THE CODESA SECRETARIAT,  
011-3972211.

FAX FROM: ORGANISATION OF LESBIAN AND GAY ACTIVISTS (OLGA)  
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# Organisation of Lesbian and Gay Activists

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# OLGA



10 March 1982

For attention: CODESA Working Group 2 on General Constitutional Principles.

Dear Sir/Madam

re: INCLUDING SEXUAL ORIENTATION IN THE NON-DISCRIMINATION PROVISIONS OF A BILL OF RIGHTS FOR A DEMOCRATIC SOUTH AFRICA

The Organisation of Lesbian and Gay Activists (OLGA) is a Cape Town-based non-sectarian organisation of lesbians and gay men committed to the building of a non-racial and non-sexist South Africa.

We are making this submission to CODESA's Working Group 2 in response to your call for interest groups to make submissions relevant to this Working Group's terms of reference.

Kindly note that, as we understand this Working Group to be only looking at general constitutional principles at this stage, we have made this submission short and of a general nature. We would gladly make a more detailed submission at a later appropriate stage, which we understand to be the stage at which a constitution-making body will have the task of drawing up a detailed constitution, including a Bill of Rights.

### Our proposal

1. We submit that the new constitution should include a Bill of Fundamental Human Rights.
2. We submit that such a Bill of Rights should include the principle of non-discrimination against individuals.
3. In particular, we submit that such a non-discrimination clause should include non-discrimination on the basis of sexual orientation, together with other factors such as race, colour, gender, language, religion and disability.

Note: Please see the attached Annexure for clarification on terms such as 'sexual orientation'.

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Member of the International Lesbian and Gay Association (ILGA)



### Our motivation

The principle of non-discrimination is a fundamental human rights issue affecting all individuals, including lesbians and gay men, who are to be found in all sectors of our society and in all organisations and parties, right across the social, economic and political spectrum.

We sincerely believe that every person should have the right to be treated with dignity and respect as an individual, regardless of whether they are black or white, male or female, young or old, able-bodied or disabled, heterosexual or homosexual.

Yet, lesbians and gay men face daily discrimination, prejudice and homophobia (eg. verbal abuse, stereotyping) in the workplace, in the home, in the media, in religious institutions and in the education system. Our law criminalises sexual acts, including the showing of affection, between gay men and, to a lesser extent, lesbians. In addition, lesbian and gay relationships are not legally recognised for purposes such as inheritance, insurance, taxation, housing, pensions, immigration and medical aid.

As with racism and sexism, we view this discrimination against lesbians and gay men as a violation of human rights. We believe that it is a basic human right of lesbians and gay men not to be discriminated against, both in their private lives and in the public sphere.

Accordingly, in addition to incorporating the principle of non-discrimination on the basis of sexual orientation in a Bill of Rights, we feel that the following steps will be necessary to make such a non-discrimination provision effective:

\* Decriminalising homosexuality

All laws criminalising lesbians and gay men should be repealed or in the case of the common law, no longer applied. Where criminal laws are necessary, for eg. to deal with sexual violence and abuse, these should not discriminate against lesbians and gay men, but apply to all people, regardless of their sexual orientation.

\* Positive anti-discrimination laws

Proactive laws will be needed, for eg. a general Anti-discrimination Act covering all the grounds listed in the Bill of Rights (race, gender, disability, sexual orientation etc) saying it will be unlawful to discriminate against people on any of these grounds in employment, education, health care, housing, the administration of justice etc.



\* Effective enforcement mechanisms

To make new bodies such as a Constitutional Court, an Ombudsbody and a Human Rights Commission effective, attention will have to be given to aspects such as the training and staffing of these bodies to ensure that the concerns of individuals and groupings that were previously discriminated against, are represented and addressed. This also applies to existing enforcement structures such as the police force.

\* Public education programmes

Accessible countrywide public education programmes will be vital in explaining the new constitution, the Bill of Rights and new laws. The need for the content of these programmes to be positive and balanced, and in keeping with the spirit of a new Bill of Rights, will be particularly crucial on sensitive issues such as gender and sexual orientation.

Above all, we feel that the inclusion of the proposed non-discrimination provision in a Bill of Rights would lay down vital basic groundrules for a future society. Together with the other changes suggested, this would send a signal of hope to historically oppressed individuals and groups, including lesbians and gay men, that the new legal and political order may be able to protect their rights, which have previously been denied or not respected.

In closing, we would also like to place on record the fact that, together with other lesbian and gay organisations nationally, OLGA is involved in a consultative process to draw up a Charter of Lesbian and Gay Rights, which we we hope will serve as a guide to the interpretation of future provisions protecting lesbians and gay men against discrimination.

We trust that the Working Group will take this submission into consideration and we reiterate our willingness to provide further substantiation, should this be required at this stage.

Your sincerely

*Derrick*

Derrick Fine  
for OLGA

Note:

\* The original of this faxed submission has been posted to the CODESA Isando box number.

\* A Definition of Terms is annexed.



**Annexure****DEFINITION OF TERMS****\* LESBIANS**

The term 'lesbians' refers to women who love, and are emotionally and sexually attracted to, people of the same gender.

**\* GAY MEN**

The term 'gay men' refers to men who love, and are emotionally and sexually attracted to, people of the same gender.

**\* SEXUAL ORIENTATION**

The term 'sexual orientation' refers to the sexual inclination of:

(a) lesbians and gay men (sometimes referred to as a 'homosexual orientation'), OR

(b) heterosexual women and men, OR

(c) people who have a bisexual (ie. homosexual and heterosexual) orientation.

**\* HOMOPHOBIA**

The term 'homophobia' refers to irrational fear and negative attitudes towards lesbians and gay men, which manifest themselves through things such as physical assault, the promotion of hatred and contempt (eg. verbal abuse, stereotyping), and through other forms of discrimination (eg. job discrimination).