

DISCUSSION PAPER

ARE OUR _____ WORKPLACES SAFE AND SUPPORTIVE?

REAL-LIFE EXPERIENCES OF LESBIAN, BISEXUAL
AND GENDER-NONCONFORMING WOMEN



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FOREWORD

ARE OUR WORKPLACES *Safe and Supportive?* is intended to stimulate dialogue and debate about the treatment of lesbian, bisexual and gender-nonconforming women in the South African labour market. The discrimination they face – although pervasive and firmly entrenched – is not an issue that sits very high on the agenda of government or employers at the present moment. Indeed, efforts to combat the day-to-day discrimination experienced by these women remain woefully inadequate.

This discussion paper draws on focus group and interview data from three provinces: Gauteng, Limpopo and KwaZulu-Natal. This research has provided crucial new information that fills in some of the gaps in our knowledge about employment discrimination based on sexual orientation and gender expression. It reveals that this discrimination is widespread, blatant and insidious (often starting with denial of employment) in spite of the constitutional and legislative protections in force. It also shows us how these forms of workplace discrimination impact negatively on the health and wellbeing of lesbian, bisexual and gender-nonconforming women and their families.

While this discussion paper presents some worrying findings, it also identifies a number of opportunities for change. It lists clear, evidence-based recommendations for the major stakeholders, including government, employers and trade unions.

This research has provided crucial new information that fills in some of the gaps in our knowledge about employment discrimination based on sexual orientation and gender expression.

It is hoped that these recommendations will inspire more coordinated efforts to address this problem.

This discussion paper is the result of a fruitful collaboration between Gay and Lesbian Memory in Action (GALA) and the Labour Research Service (LRS), and has been produced alongside *Equality is Everyone's Business: Eliminating Homophobia and Transphobia in South African Workplaces*, a simple-to-use guide for workers, employers, HR managers, trade unions and NGOs. Both publications are part of a project funded by the International Gay and Lesbian Human Rights Commission (IGLHRC) to address workplace discrimination on the basis of sexual orientation and gender expression.

GALA and the LRS would like to thank the authors, Nina Benjamin, Nosipho Twala and Finn Reygan, as well as John Marnell for his contributions and edits, and Karen Jennings for proofing the final report. We would also like to express our deep gratitude to all the people who participated in the focus groups and who were interviewed for this project. We would further like to thank IGLHRC for the financial support that made this project possible, with special thanks going to Shehnila Mohamed, Lindie Botha and Debbie Watson.

Realising equality in the workplace will not happen overnight. It is a long process, and one that will require meaningful commitment and collaboration between employers, government, trade unions, civil society organisations and other agents of change. We hope this discussion paper will be a first step in taking action.

Anthony Manion
Director
Gay and Lesbian Memory in Action

EXECUTIVE SUMMARY

THE RIGHTS OF lesbian, gay, bisexual and transgender (LGBT) workers has emerged as a key concern for labour organisations, both here in South Africa and internationally. This is because of a growing body of research indicating that LGBT workers face high levels of marginalisation and violence. In many cases, LGBT jobseekers are unable to secure employment because of their perceived sexual orientation or gender-nonconformity. Those who do manage to access work face various forms of discrimination, including restriction of job duties; being passed over for promotion; animosity from co-workers and supervisors; name-calling; verbal and physical intimidation; blackmail; limited productivity and career progression; and physical and sexual violence. LGBT employees are often reluctant to report incidents of discrimination as they rightly fear secondary victimisation. The psychological consequences of this treatment can be severe and can include anxiety, depression and suicide ideation. This leads many LGBT people to rely on casual work and self-employment rather than on formal employment, which in turn places them in more precarious work situations.

While South Africa has taken the lead in a number of global initiatives in relation to LGBT rights, it still has a long way to go in terms of

workplace rights for LGBT people. Conservative attitudes towards sexual and gender diversity remain widespread, and the government continues to face significant criticism over its failure to enforce legal protections or to respond to violence and other forms of discrimination. These concerns are reflected in this study's findings, which indicate that LGBT workers struggle to find information on the laws and policies intended to protect them. Many are unaware or misinformed about their rights or the procedures to follow when these rights have been violated. Trade unions and employers also often lack this information, a problem exacerbated by a lack of resources on the topic. The absence of clear policies or guidelines has led to widespread confusion about how to respond to discrimination on the basis of sexual orientation or gender identity. There is thus an urgent need for more research into the experiences of LGBT workers and for targeted, evidence-based initiatives to be developed.

The study on which this discussion paper is based was a first step towards filling this knowledge gap. A decision was made to focus on the lived experiences of lesbian, bisexual and gender-nonconforming workers, as these women experience double jeopardy in terms of their oppression: firstly, because they are women; secondly, because they identify as lesbian or gender-nonconforming. The accounts collected here point to the serious nature of this type of discrimination and to its significant impact on the lives of these women. The participants report harassment, marginalisation and exclusion from employment. Their families and relationships were generally invisible to employers, and they were routinely denied the same rights afforded to their heterosexual colleagues. Employers and trade unions were largely unprepared to respond

LGBT workers struggle to find information on the laws and policies intended to protect them. Many are unaware or misinformed about their rights or the procedures to follow when these rights have been violated.

to their needs and were generally unwilling to prioritise issues related to sexual and gender diversity. In short, the accounts collected here paint a bleak picture. They point to an absence of policies and practices to protect the rights of LGBT workers, and to an overall lack of commitment from the major stakeholders.

Nevertheless, there were some positive aspects, most notably the ability of some participants to develop resilience and to respond proactively to workplace discrimination. Some participants, for instance, shared accounts of educating colleagues about LGBT lives and rights. Participants were often unwilling to hide who they are in order to 'fit in' and were adamant that employers, trade unions, management and fellow workers needed to recognise their constitutional rights to respect, dignity and a decent working environment.

This discussion paper concludes with recommendations for a number of major stakeholders. It is hoped that these recommendations will lead to open conversations about sexual and gender diversity in the workplace, and to concrete action plans being initiated.

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GLOSSARY

LGBT TERMINOLOGY

BISEXUAL: a person who is emotionally and sexually attracted to both men and women.

BUTCH: a masculine gender expression.

COMING OUT: the process of recognising and acknowledging one's sexual orientation or gender identity, and the decision to be open about it with oneself and with others.

GAY: a man who is emotionally and sexually attracted to other men. (Note: while the term 'gay' is primarily used in relation to males, it is also sometimes used to describe any same-sex-attracted person. Some lesbian women, for instance, may self-identify as gay.)

GENDER EXPRESSION: how a person expresses their gender identity – for instance, through clothing, behaviours, mannerisms, speech patterns, social activities and so on.

GENDER IDENTITY: an individual's inner sense of being male or female (or both or neither). For some people, their gender identity differs from their physical anatomy or expected social roles.

GENDER TRANSITION: the process of changing one's physical body to align with one's gender identity. This is a complicated, multi-step process that can take years. A transition can take different forms – some people may choose to take hormones only, while others may also undergo various forms of surgery.

HOMOPHOBIA: the fear or hatred of those assumed to be lesbian, gay or bisexual, and of anything connected to these persons and their communities.

INTERSEX: a general term referring to a variety of conditions in which an individual is born with reproductive or sexual anatomy that does not fit the typical definitions of female or male.

LESBIAN: a woman who is emotionally and sexually attracted to other women.

TRANSGENDER: a person whose gender identity or expression does not match their biological sex.

TRANSPHOBIA: the fear or hatred of those seen to transgress or blur social expectations of gender, and of anything connected to these persons and their communities.

LABOUR TERMINOLOGY

COLLECTIVE AGREEMENTS: collective agreements emerge out of a process of bargaining between employers and employees. The collective agreement regulates the terms and conditions of employees in the workplace. Agreements can be set at company, industry or sector levels.

GENDERED DIVISION OF LABOUR: the division of roles and activities based on social expectations about what is appropriate for men and for women – for instance, care-based roles are often understood to be 'women's work'.

GENDER STEREOTYPING: generalisations and assumptions about what a person is capable of based on their gender.

INTERNATIONAL LABOUR STANDARDS: agreements in the form of conventions at an international level between governments, business and labour on a minimum level of protection for workers. National governments are able to use these standards as a tool guiding the development and enforcement of labour legislation.

PROJECT BACKGROUND

THIS DISCUSSION PAPER has grown out of a partnership between Gay and Lesbian Memory in Action (GALA) and the Labour Research Service (LRS).

Since 2009, the LRS has coordinated two International Trade Union Confederation (ITUC) campaigns on promoting the rights of women in the workplace: the Decisions for Life campaign and the Labour Rights for Women (LRW) campaign. During both campaigns, workers and trade union officials indicated a need for interventions focusing on homophobia and transphobia in the workplace. In particular, it was recognised that trade unions require support and advice on handling cases of discrimination against LGBT workers. This call for targeted programming followed a spike in murders of lesbian and gender-nonconforming women, a situation that alarmed many labour activists. Concern over these crimes led to the COSATU National Congress passing a resolution calling on affiliate trade unions to actively promote and protect the rights of LGBT workers (see Appendix I).

The collaboration between GALA and the LRS began in early 2013. Since then the two organisations have, in conjunction with MyWage and the LRW campaign, held several workshops, debates, discussions and focus groups. These have been attended by LGBT workers and activists, members of the four major labour federations (FEDUSA, COSATU, NACTU and CONSAWU), and representatives of human rights and social justice organisations. It was in these spaces that data was collected for the current study. The first-person accounts analysed here emerged from dialogue sessions in Gauteng, Free State and Mpumalanga; focus groups in Gauteng, Limpopo and Durban; and a once-off workshop in Gauteng.

As well as providing the basis for this discussion paper, this data was used to develop *Equality is Everyone's Business: Tackling Homophobia and Transphobia in South African Workplaces*, a simple-to-use guide for workers, employers, HR managers, trade unions and NGOs. Free copies of this booklet can be obtained from GALA or the LRS.

GLOBAL CONTEXT

INTERNATIONAL LABOUR LAW (also called ‘labour standards’) is the body of rules regulating workplaces. Spanning both the public and private sectors, international labour law outlines the rights and duties of employees, employers, trade unions and governments. The International Labour Organisation (ILO) and the World Trade Organisation (WTO) have been the main bodies involved in labour market reforms. The ILO, a tripartite organisation that brings together governments, employers and workers, currently has 185 member states. Its primary role is to develop and enforce international labour standards that are endorsed by its members. In 1958, the South African government signed the ILO’s Convention 111, which is concerned with anti-discrimination in the workplace. This convention prohibits any form of discrimination that has the effect of ‘nullifying or impairing equality of opportunity or treatment in employment’. Signatories of the convention are required to cooperate with workers’ organisations, to develop and implement appropriate anti-discrimination legislation, and to ensure protection for minority groups.

Many of the world’s leading labour organisations are increasingly aware of the need for workplace protections for LGBT people, and international labour law now recognises this previously invisible workforce. For example, the ILO has specified that unfair

treatment of LGBT workers constitutes discrimination (ILO, 2011), but the organisation has yet to revise Convention 111 to explicitly mention LGBT workers.

In 2012, the ILO launched the PRIDE Project (Promoting Rights, Diversity and Equality in the World of Work), which seeks to address discrimination against LGBT workers and jobseekers. Preliminary research has been conducted in a few select countries, including South Africa, and initial results show that policies protecting LGBT workers tend to be poorly applied. This in turn allows for discrimination and violence to continue unchecked. Furthermore, the research indicates that the majority of LGBT workers choose to conceal their sexual orientation and gender identity at work, and that this can cause stress and have negative consequences on productivity and career progression (ILO, 2013).

Trade unions form a key constituency of the ILO. They operate at a number of levels, including national unions organised by sector or geographical area. National unions can come together as larger federations (such as COSATU, FEDUSA, NACTU and CONSAWU in the South African context). National federations can in turn come together as international confederations, such as the International Trade Union Confederation (ITUC). The ITUC was founded in November 2006 and represents 175 million workers in 153 countries, with 308 national affiliates.

Trade unions can play an important role in combatting homophobia and transphobia in the workplace. In 2010, the ITUC Congress affirmed that discrimination on the basis of sexual orientation is a human rights violation and called on its members to actively combat homophobia. Despite this strong stance, the ITUC is yet to adopt specific action plans.

Global unions are international federations of national and regional trade unions organising in specific industries or occupation groups (as opposed to broad confederations such as the ITUC). Global

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union federations (GUFs) play an important role in broadening the trade union agenda. GUFs also run campaigns at an international level and develop international framework agreements (IFAs) with multinational corporations. A number of South African trade unions are affiliates of the nine biggest GUFs.

A number of GUFs have signed at least one IFA that includes sexual orientation in its non-discrimination clause: the International Metalworkers' Federation has the most at sixteen, followed by the International Federation of Chemical, Energy, Mine and General Workers' Unions with five; UNI Global Union with four; Public Services International with two; and Building and Wood Workers' International with one (see Hunt, 2015 for a comprehensive overview of GUF responses).

The corporate home bases for these companies are all within Western Europe, except for one based in South Africa. This last one – a global agreement between packaging company NAMPAK and UNI Global Union (signed in 2006) – states:

There is no discrimination in employment. All workers shall have equality of opportunity and treatment regardless of ethnic origin, colour, gender, religion, political opinion, nationality, social origin, sexual orientation or other distinguishing characteristics. There shall therefore be no pay discrimination on the basis of these characteristics.

Anti-discrimination clauses such as these are important tools for activists fighting for LGBT equality, especially in terms of raising awareness of the issue. It is already possible to see the impact of the commitments made by GUFs. In 2011, for example, 150 delegates from forty-five countries gathered in Cape Town for a two-day forum on sexual diversity. This event was jointly organised by Education International and Public Services

International, and was their third LGBT forum (EI-PSI press release, 2011). EI and PSI – which together represent over 50 million workers, covering 950 different national unions – have worked closely to make sexual orientation discrimination a priority.

In 1999, PSI and EI jointly published *Working for Lesbian and Gay Members*, which maps out a comprehensive strategy for trade union action (an updated version was released in 2007). In 2004, the EI-PSI LGBT Forum was created to generate awareness of sexual diversity issues among their members. The forum's role is to document cases of discrimination, to organise training sessions and to motivate for the inclusion of sexual diversity rights in international conventions.

Another important body addressing LGBT rights in the workplace is UNI Global Union. It is the most diverse global union, covering workers in sectors such as cleaning, media, arts, gaming, sports and tourism. In 2014, on the occasion of the International Day against Homophobia, Transphobia and Biphobia, UNI's equal opportunities department made a statement calling for the end of all types of discrimination. UNI has since then developed educational programmes to inform its members about discrimination on the basis of sexual orientation. It has held training forums in Africa, Asia, Europe and Latin America on 'decent work with dignity' and these forums have included information on sexual orientation.

PSI and EI jointly published *Working for Lesbian and Gay Members*, which maps out a comprehensive strategy for trade union action.

THE SOUTH AFRICAN CONTEXT

SOUTH AFRICA HAS extensive legislative protections relating to equality, dignity and human rights. The most significant of these is the Bill of Rights contained in the Constitution. The Bill of Rights declares that every person is equal before the law and has access to the same legal protections and benefits. In Chapter 2.9.3, it specifically states that no person may be discriminated against on the basis of sexual orientation, gender or any other characteristic. This clause comes with certain responsibilities on the part of the state, which must ensure that these rights are promoted and protected.

South Africa has made international commitments to eliminate discrimination against LGBT persons and has spearheaded initiatives to highlight the issue at the international level. In 2011, South Africa presented a resolution to the UN Human Rights Council calling for an international investigation into laws and practices discriminating against sexual and gender minorities. The subsequent report noted that while South Africa has made great strides in terms of legislative reform, the country continues to be plagued by high rates of violence against LGBT people (UN Human Rights Council, 2011).

South Africa has also made a number of commitments in the realm of workplace rights, but studies have again identified high levels of discrimination. As a response, the ILO and the South African government launched the Decent Work Country Programme in 2010. This programme is designed to promote workplace rights, encourage employment opportunities and expand social protections. However, the issue of workplace discrimination against LGBT people has not been made a priority, despite South Africa's international statements on sexual and gender diversity. The programme does not identify LGBT people as a vulnerable group, nor does it mention strategies to address the barriers to employment facing LGBT people.

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Although the government has not made this issue a priority, it has enacted a number of laws and policies that extend to LGBT workers. The most important of these is the *Promotion of Equality and Prevention of Unfair Discrimination Act* (2000), which gives further detail to Section 9 of the Constitution. The Act prohibits harassment, hate speech and all other forms of discrimination, and makes specific mention of discrimination on the basis of sexual orientation. Other legislation covering employment rights include the *Labour Relations Act* (1995), the *Basic Conditions of Employment Act* (1997) and the *Employment Equity Act* (1998). These Acts outline the rights and responsibilities available to all workers, and offer some protections relating to sexual orientation. For example, Section 187 (1) (f) of the *Labour Relations Act* prohibits dismissal on the grounds of sexual orientation. Section 6 of the *Employment Equity Act* also prohibits discrimination on the basis of sexual orientation. It also stipulates that the courts can hold employers liable, under certain circumstances, for acts of discrimination by any of their employees while at work. It must be noted, however, that these Acts are not clear when it comes to the specific needs of transgender workers.

The *Medical Schemes Act* (1998) also offers important protections for lesbian and gay workers.

While these codes of good practice are worded in an inclusive manner and make mention of the Constitution, they do not include LGBT people as one of the groups considered vulnerable to workplace discrimination.

It prohibits discrimination against an employee on the basis of HIV status or sexual orientation, but again makes no specific reference to the needs of transgender workers. The Act also recognises same-sex dependents as legal beneficiaries.

The Department of Labour has released a number of codes of good practice that employers are required to implement. But while these documents are worded in an inclusive manner and make mention of the Constitution, they do not include LGBT people as one of the groups considered vulnerable to workplace discrimination.

The 1998 *Code of Good Practice on Handling Sexual Harassment Cases* requires employers to take preventative steps and to ensure that effective policies are in place:

[A]ll unwanted communication/physical contact of a sexual nature is defined as harassment. Employers are given the responsibility to eliminate any environments which perpetuate these kinds of behaviours, have policies regarding their stance on sexual harassment, create systems and procedures where the behaviours can be reported and investigated and victims can receive support and care.

This code is written using gender-neutral terms, with no specific mention of women or LGBT persons.

The 1999 *Code of Good Practice on Employment Equity* advises workplaces to set up assessment structures to review policies, practices, procedures and work environments, and to create a workplace profile that identifies places of discrimination. Employers are also advised to conduct and execute a plan to change any identified sites of discrimination.

A further structure worth mentioning here is the National Task Team on Gender- and Sexual Orientation-Based Violence, which was established by the Department of Justice and Constitutional Development in 2011. The task team's mandate is to roll out a national intervention strategy to combat violence against LGBT people and to develop a coordinated plan that will align the work of government and civil society. In 2014, the National LGBT Programme was launched to address 'the root causes of the continued violence and threats against members of this vulnerable group' (Nath, 2014). The programme came into effect in April 2014 and its effectiveness is yet to be determined. It must be noted that the programme is primarily designed to strengthen the response of the criminal justice system to cases of discrimination and violence, and so its impact on employment rights will likely be indirect.

The labour market

The understanding of what constitutes a workplace has changed in South Africa, as it has elsewhere. In the past, a workplace was any location or setting (such as an office, factory, farm, shop, hospital or school) where a full-time employee works for and is remunerated by an employer until retirement. In this traditional set-up, employers and employees operated according to a range of international and national labour laws, and conditions were dealt with through a process of bargaining.

Today's workplaces are a far cry from the one described above. South Africa has very high rates of unemployment, and of those people who are able to enter the labour market, very few are able to secure full-time work. Most fall into what can best be described as precarious forms of employment, such as contract, temporary, outsourced or self-employed work. Low wages, long working hours, poor occupational health and safety conditions, and unsafe, insecure and unregulated working environments are often associated with these forms of employment. In many cases, those working in precarious jobs are denied their basic rights and protections.

The government's Labour Inspectorate has the important role of ensuring that regulations protecting workers are followed in all workplaces. Yet, a report from the inspectorate's 2011 national conference identifies a number of factors impeding its ability to fulfil this mandate (Nxawe, 2011). These include a lack of compliance with legislation, a lack of visibility, insufficient training for inspectors, and inadequate resourcing. These findings are of particular concern for those workers who are most in need of protection against discrimination and violence, such as women, young or old persons, workers with a disability and LGBT employees.

Collective bargaining and LGBT rights

Unions are responsible for representing and advocating for their members and can therefore be a powerful force in fighting discrimination. They also play an important role in securing collective bargaining agreements that are reached through formal negotiations between unions and employers. A collective bargaining agreement standardises employment protections for the unit that has been bargained for, and are legally binding in ways that

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other kinds of employer policies and protections are not.

In South Africa, LGBT issues are very rarely part of collective bargaining practices. While many unions choose to include 'life partners' alongside of spouses in the wording of employee benefits, very few make mention of other issues or protections relating to LGBT workers. In a recent search of South African labour federation websites, only one (COSATU) was found to have a policy that included sexual orientation in employment bargaining; two others (SAMA and SATAWU) were found to make mention of sexual orientation but with no strategies for, or practical examples of, protection measures against discrimination.

Generally speaking, collective bargaining agreements in South Africa privilege wage settlements. They tend to mirror some of the categories identified in the *Basic Conditions of Employment Act* (1997), with very few including measures to address discrimination. There are currently eleven sectoral determinations or wage minima governing vulnerable workers. These relate to the following sectors of the economy: forestry; agriculture;

contract cleaning; children (under fifteen years of age) in the performance of advertising, artistic and cultural activities; taxi operators; civil engineering; learnerships; private security; domestic workers; wholesale and retail; and hospitality. However, none of these determinations speak directly to LGBT workers in these sectors.

Trade unions and employer organisations also form bargaining councils to deal with collective agreements, solve labour disputes, establish various schemes, and make proposals on labour policies and laws. Trade unions use bargaining councils to negotiate for wages but also for conditions of service in relation to the minimum criteria set in the BCEA. In South Africa, there are currently thirty-nine registered private-sector bargaining councils and six government bargaining councils (inclusive of both national and provincial levels).

None of the current bargaining council agreements make any mention of discrimination against LGBT workers, but there are references to 'life partners'. An example of a private-sector bargaining council agreement is the one developed by the Motor Industry Bargaining Council, which uses the BCEA as a guide and explicitly includes life partners in its provision for family responsibility leave. An example of a government bargaining council agreement is the one developed by the Public Service Coordinating Bargaining Council, which lists both spouses and life partners when referring to family responsibility leave. Company-level bargaining agreements are

also reached between one or more trade unions and employers. A survey by the LRS of 300 company-level agreements beginning in 2010 did not find any clauses speaking directly to the rights of LGBT workers.

The situation for LGBT workers

Discrimination based on sexual orientation or gender identity can take many forms. It can range from interpersonal animosity and offensive jokes, to verbal, physical and even sexual abuse (GALA & the LRS, 2013). The participants in this study also spoke of biased employment practices, such as having job duties restricted, being passed over for a promotion, or not being equitably rewarded for tasks completed. Employees exposed to these forms of discrimination can experience anger, low self-esteem, limited job satisfaction and emotional withdrawal from work, often accompanied by feelings of isolation, stress and other mental health issues.

In many cases, these discriminatory practices stem from entrenched notions about 'appropriate' behaviours for men and for women. Heteronormative understandings of the role of women and of men shape how labour is distributed, both in the home and in the workplace. Such assumptions are mirrored in legislation such as the BCEA, the law governing conditions in the workplace. An example of this is the Act's interpretation of parental care: it enshrines the right of female employees to four unpaid months of maternity leave, but makes no provisions for fathers or for non-biological parents. Adoption benefits do not exist in South African labour law and have to be negotiated between the employer and the individual employee. This means couples or individuals adopting a child have no legally enforceable parental rights. The provision for maternity leave in the BCEA is based on

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heteronormative understandings of child rearing. In this model, it is the mother who is responsible for the nurturing of a baby. There are no distinct paternity leave provisions; a father must instead apply for family responsibility leave. The BCEA stipulates that the three-days per annum of family responsibility leave may be used when an employee’s child is born; when an employee’s child is sick; or upon the death of the employee’s spouse/life partner, parent, adoptive parent, grandparent, adopted child, grandchild or sibling.

The BCEA thus reinforces the heteronormative expectation that childcare is women’s work. This gendered division of labour is cause for concern and feeds into the stereotype that women are natural carers. Men, on the other hand, are stereotyped as the providers and breadwinners of the family. The gendered division of labour is also directly tied to the idea of the nuclear family – that is, the ‘stay-at-home mother’ and the ‘working father’ – and this continues to be seen as a societal norm, even though it bears little resemblance to the daily lives of many South Africans. This heteronormative conceptualisation of the family excludes and discriminates against LGBT

people whose relationships and family configurations do not align with the ‘norm’.

Another area of concern for LGBT workers is sexual violence and harassment. In the 2011 report *We’ll Show You You’re a Woman*, Human Rights Watch notes that South Africa has some of the highest rates of violence in the world. It goes on to state that ‘violence against lesbians, transgender men and gender-nonconforming people occurs within the context of an epidemic of gender-based violence in South Africa’ (Human Rights Watch, 2011, p. 16). The working environment is not immune to such violence (the term ‘working environment’ is used here as violence can occur outside of the formal workplace – for instance, at social events linked to work or at a meeting in a client’s home). Human Rights Watch goes on to define gender-based violence as ‘violence directed against a person on the basis of gender or sex’ and notes that it can take many forms:

[Gender-based violence] can include sexual violence, psychological abuse, sexual exploitation, sexual harassment, harmful traditional practices and discriminatory practices based on gender. (Human Rights Watch, 2011, p. 11)

Sexual violence is pervasive and normative in South Africa and is therefore a matter of grave concern. When such violence occurs in the workplace – as in other contexts – it is essentially an abuse of power. In some cases, sexual violence is used to punish or control LGBT people, who are seen by many to be deviant, immoral or un-African.

DATA SOURCES

THE DATA FOR this study was sourced at a number of events held by GALA and the LRS. The two organisations launched the ‘Workplace Rights Belong to Everyone’ campaign at the beginning of 2013 with a sensitisation workshop with trade unions (GALA & the LRS, 2013).

A follow-up workshop was held on 23 July 2014. The event was attended by thirty-eight people, including LGBT and gender activists, and representatives from NACTU, COSATU, FEDUSA and CONSAWU. Attendees were asked to invite lesbian, bisexual and gender-nonconforming workers to the workshop, and six of these women agreed to participate in a focus group.

A sales manager who had participated in the workshop also agreed to a private interview in order to capture a managerial perspective. In addition, an openly lesbian cleaning supervisor who had heard about the focus groups agreed to be interviewed about her experiences.

On 24 July 2014, a second dialogue session was held in Polokwane, Limpopo. Organised by the LRW Campaign, and supported by GALA, the LRS, the Wage Indicator Foundation and the Solidarity Centre, the dialogue was attended by fifty people, including representative of the four major trade union federations, the Aids Consortium, the Commission for Gender Equality, the South African Human Rights Commission, and Limpopo LGBTI Proudly Out. The dialogue focused on ways to raise awareness of discrimination and unfair treatment directed at LGBT workers and jobseekers. Participants were also asked to consider an action plan that

could be used to address the challenges identified during the dialogue.

Eight women from the Polokwane event (including a representative of the LRS and a representative from the Solidarity Centre) agreed to participate in a focus group that took place immediately after the dialogue session. The participants spoke broadly about their experiences working in the retail, construction, mining, security and social justice sectors

On 1 December 2014, the Durban LRW Campaign assisted GALA and the LRS in organising a focus group with seven lesbian workers and jobseekers. The COSATU national gender coordinator also participated in this session.

This paper draws on the minutes of the dialogue sessions, as well as on transcriptions of the three focus groups. Participants in the focus groups all signed consent forms allowing GALA and the LRS to freely use the recordings and transcripts (note that participants were given the option of using a pseudonym of their own choosing). Quotes from the general dialogue are indicated, but no name is provided. A decision has also been made to remove mentions of specific workplaces in order to protect the anonymity of participants.

Reports of the workshop and dialogues were distributed to all participating organisations and are available from the LRS. In addition, a press statement outlining the key discussion points was released in August 2014 and has been included in Appendix II.

FINDINGS

Experiences of discrimination

Gender stereotyping is all too common in South African workplaces, and very few employers have policies in place relating to inclusive workplace 'cultures'. Workplace culture is understood as the invisible set of rules an employee navigates, sometimes with the support of co-workers, but often alone. In South Africa, workplaces are gendered in complex and intersecting ways: ideas, processes, structures and practices often reinforce and normalise social expectations about masculinity and femininity. The most obvious example of this is how certain jobs continue to be perceived as women's jobs. These heteronormative assumptions have direct and far-reaching consequences for LGBT workers, who are expected to conform to expectations about how to dress, act and self-identify.

In the quote below, Phiwe explains how she presents as feminine in the workplace and is therefore perceived to be adhering to the 'rules' of gender:

I dress feminine. I put on my make-up and it is not a problem, until I say that I am a lesbian. But when it comes to a butch person, it is difficult.

Dressing femininely and wearing make-up or jewellery can mean that a lesbian or gender-

In South Africa, workplaces are gendered in complex and intersecting ways: ideas, processes, structures and practices often reinforce and normalise social expectations about masculinity and femininity.

nonconforming woman 'fits in', but is also often read as her being 'available' to men (GALA & the LRS, 2013). After disclosing her sexual orientation, Phiwe encountered animosity and confusion from colleagues:

Immediately after me coming out, things started changing in a serious way. Everybody was on my case and watching every move that I made.

Nkele, who identifies as a butch lesbian, speaks here about the difficulties she has experienced in accessing employment because of her gender expression. She believes that her presentation is an obstacle for securing a job, with potential employers disregarding her application because of her clothing and other gender signifiers:

When I buy Job Mail and want to apply for a job, I think about the past and know that they would look at my appearance and know that I'm lesbian. So I'll rather not apply, even though I've done so many courses that put me at an advantage. I have qualifications and certificates that can fill the room. There are jobs that I can get, but I've decided not to hurt myself.

T-man opts to work at NGOs, where she believes she will be welcomed and respected:

I have never worked for any company because, as a butch lesbian, I'm easily identified during an interview. Anyone can pick up that I'm lesbian and as a result I do not get hired. I have always worked in NGOs ... There are very few lesbians employed in companies: most of them are working for NGOs or are self-employed. Those that are employed got that job through a referral or a network. They may be referred by a friend, cousin or a relative who is

employed in the same company, but when you make one mistake you are kicked out.

Ella also identifies as a butch lesbian. She worked for a few years at a government department and refused to give into pressure about how to dress:

From my side it is really obvious: I walk in and they say, 'Dress code!' Some of them stare, hide and talk. [They say:] 'You are a chick but you are wearing men's clothes.' Some of them react weird and some of them accept, but it takes time. I don't give a fuck!

The focus group participants sometimes disagreed about the best way to challenge discrimination, with some believing that it is better to conform to gender norms in order to access employment.

Bongiwe: My advice to you is that when you butches go to an interview, you must dress like a lady.

T-man: No! No! No! I can't pretend. I was born lesbian and I will die lesbian. Even my mother and father died knowing that I'm lesbian. Why must I pretend? People can see from my work that I'm not a lady. ... Imagine me in a dress! They will see my movements and will question it. I cannot change my sexuality for a job. Let South Africa and the Constitution push for LGBT people to be hired based on their experience, level of education and qualifications.

The issue of when and how to come out was an important talking point. Participants were aware of the potential consequences, which can range from harassment and the restricting of job duties, through to threats of and actual violence. The comment below was shared at the Limpopo dialogue:

“I cannot change my sexuality for a job. Let South Africa and the Constitution push for LGBT people to be hired based on their experience, level of education and qualifications.”

Dressing up in order to get a job does not mean you are weak. I just think that it's easier to fight the system from within. If you need a job, you will do anything to get it. I think that as LGBT people we need a strategy. We can dress up for the interview and only disclose who we are after a few months of employment.

T-man shared the experience of a friend who has struggled to hold down a job because of her butch gender presentation:

Let me tell you something. A friend of mine was hired as a nurse and disclosed after a few months of employment that she is lesbian. She has worked at more than ten clinics in the district because she is a butch lesbian. They treat her badly. They don't even select her to attend trainings and workshops. As a result she does not qualify for a promotion.

Participants reported having to choose between disclosing their identities and thus facing unemployment, or hiding who they are in order to earn a living. This is particularly the case in communities where people know each other, as Phiwe explains:

My friend said to me: 'Please, when you get there, just deny who you are! It is a local organisation. She said

that the person I was going to hand in my CV to knows me, knows I'm lesbian, and I just have to deny it. I thought to myself: how do I deny who I am? Is the work based on my sexuality, or is it going to be based on what I am capable of doing? So I decided not to hand in my CV. I am not going to sell myself short for something that is not going to even last forever. What I am is who I am, and this will last for the rest of my life.

Participants also reflected on gender stereotypes and societal expectations, and on how certain occupations are considered appropriate for men and appropriate for women. Nkele, for example, shared her experience of being interviewed for a job in the mining sector. Extractive industries not only remain male dominated, they are also considered by many to be a male realm – that is, as unsuitable sites for women:

I went to an interview to be a machine operator at the Lonmin mine in Rustenburg. The position wanted both men and women. I was the only woman who came for the interview. I was appointed and went for a medical check-up and passed it. I only failed the acclimatisation test, but after trying it for three days, I passed. Men started remarking that I look like a man and that is why I passed. They asked me if I think I will survive underground. They said that it's dark and slippery underground and if you do not have

balance you will fall. [They said] only men can survive underground; this work is for men. I think they didn't know that I am lesbian. After signing the contract, I broke my leg and had to go back home. I ended up losing my job. I spent four months recovering, but sent in all the medical reports. When I went back, my post had vanished.

Despite qualifying for the job, Nkele experienced the kind of discrimination that many women encounter when entering a male-dominated industry. But there was a second level of discrimination here because she was perceived to dress like a man. Nkele tried to gain support from the workers' organisation but instead experienced secondary victimisation:

I think unions can assist in helping workers and the community to accept LGBT people. Unions need to be LGBT friendly and to treat seriously every reported incident. The National Union of Mineworkers officer dragged my case; I phoned and phoned and then decided to pay him a visit. When I got there, he asked me if I was lesbian in a room full of men. They all looked at me; I was humiliated.

Gender-based violence is endemic in South Africa, and many women struggle to access services or to assert their basic rights. Lesbian, bisexual and gender-nonconforming women face two intersecting forms of oppression: firstly, because of their sex; secondly, because of their sexual orientation or gender-nonconformance. For this reason, lesbian, bisexual and gender-nonconforming workers face unique challenges on top of those they share with other women. Lesbianism and gender-nonconformance, for instance, are sometimes linked in people's minds to predatory behaviours or sexual deviancy, and this misconception can be used as a weapon against

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lesbian, bisexual and gender-nonconforming workers. As T-man explains below, openly LGBT workers can sometimes be accused of misconduct simply because of their sexual orientation:

People didn't accept me because they thought that I was going to rape them. When we went to workshops, I used to sleep alone as no-one wanted to share [a room] with me ... Some participants went to an extent of claiming that I had raped them. This discrimination continued until I decided to challenge it. They will accuse you of touching a colleague inappropriately and you will be fired because people think that homosexuals want to rape every same-sex person they come across ... These people are homophobic and they have tricks.

The 'tricks' T-man speaks about are often linked to common stereotypes about lesbianism: that lesbians are women imitating men, that lesbians

are sexual deviants, that lesbians cannot have healthy relationships, that lesbians cannot control their sexual urges and so on.

Responses to discrimination

The participant accounts reveal the strong influence of stereotypes and cultural norms on work environments. Many noted how these social factors sustain homophobia and transphobia, and make it difficult for lesbian, bisexual and gender-nonconforming women to undertake their work duties. However, some women felt that their personality traits helped them to overcome tensions and to become more accepted by colleagues. Ella, for instance, feels that her positive demeanour has been an advantage for her:

Everyone says to me 'Hola!' – even the manager. Maybe I am friendly, or talk too much. I have been working there for eight years. In the beginning some of them were scared about getting to know me. I gave them a positive reaction and ... they found that I was open.

Mamkete works as a supervisor in a cleaning company. She reports experiencing sexism and homophobia, but feels that she is able to overcome these by acting as a positive role model. She explains here how her strengths as a supervisor, her warm personality and her spirituality have helped her to cultivate a supportive and accepting environment:

The challenge I have is usually with the new males who are recruited. They become very stubborn in the beginning and refuse to take instructions from me because I'm a woman. Some of them even make a point of reminding me that I'm not a man and that I must stop behaving like one. I do not report them

because the grievance process takes too long, but I gently educate them. In short, I make them my project. Men also have a tendency to think that if they treat you nicely or propose love, you will change and become straight.

The other challenge I have is that when I fight or quarrel with my colleagues, they sometimes call me a stabane. I do not allow this to get to me because this only happens when we fight. As a person who grew up with siblings, I know that this always happens in a fight. Some of them apologise afterwards. When they say stabane, my response is 'Proudly so, my dear!' My spirituality has taught me that forgiveness is an important part of building any relationship.

For Mamkete, being open and honest about her life is the best way to confront prejudice in her team:

Because I'm open, people find it easy to accept me. When they speak about their families on Mondays, I also tell them about my partner. When I keep quite or stay out of the discussion, they worry. Most of my colleagues ask me to help them when a relative discloses their sexual orientation. I really do not have a problem at work. Everyone knows that I'm lesbian, and after attending my first Pride this year, I brought pictures and shared them with the team. I am very jolly and outspoken ... I do not play victim. When it's time to work, I work; when it's time to party, I party; when it's time to pray, I pray. So who can hate me? I don't hide behind my sexual orientation.

Nonkululeko works in the male-dominated chemical industry and ascribes the lack of discrimination she has experienced to her 'strong personality'. However, she knows of other LGBT people who are not so fortunate:

As time goes by people start accepting me. I have a strong personality and stand my ground. I have not experienced much discrimination at work, not like as a child being called names ... I have found a group of older men who accept me. They say: 'You like women, we like women – you are one of us!' I say: 'No, I am not one of you.' But they were very welcoming towards me.

A former gay male colleague of mine was harassed. I did not spend much time with him, but afterwards when we met up – he had moved to a different company – he said he was being harassed but decided to bottle it up. Sometimes I think it is easier to be lesbian in a male-dominated environment than to be gay, which is associated with femininity. We work with chemicals and at the end of each shift we shower. In the showers, he was called stabane, but he kept quiet and left. He kept quiet and decided that this was not for him.

For both Mamkete and Nonkululeko, having a strong personality and being open about their identity has helped them to fight discrimination, but it must be noted that both women, as supervisors, have a level of authority.

Some participants also spoke about how they have used activism to bring about change in their

“I do not play victim. When it's time to work, I work; when it's time to party, I party; when it's time to pray, I pray. So who can hate me? I don't hide behind my sexual orientation.”

workplaces. Phiwe and Nonkululeko are both trade union activists and have worked hard to educate their comrades in the workers movement. Phiwe reflects below on how it can be possible to alter perceptions within a workplace:

Start with co-workers and officials ... I would work my way up. I had a year plan that I would include LGBT [rights] and I would have workshops with the unemployed, the cleaners and everybody, including the community.

Nonkululeko also proposed starting with the lower levels of leadership and working upwards. She believes that such a process is about empowering people with knowledge:

Start with the lower level of leadership, the members and the gender activists. Once we have the foundation right, the gender activists need knowledge. People are ignorant, and with uneducated people what they do not know does not exist. If we empower people with knowledge, people will be free to act. We do not have a manual to prescribe our lives: whatever works for you is fine. Practise tolerance.

Management experiences

The study participants acknowledged the sometimes difficult decisions that have to be made by managers. Jabu, a healthcare manager, explains the negative community reaction she encountered after hiring a gay man:

Some years ago I facilitated some interviews and I appointed an LGBT person to be a community healthcare worker ... Now, what happened after appointing this person [is that] the community rejected him. Suddenly the programme was no

longer effective. My targets were no longer effective. In the next year, when I was doing appointments, there was another LGBT person who was shortlisted. He had potential, but I decided on my own that he is not getting the opportunity because my targets would be affected. I was rated as underperforming because this person is not being accepted into the kinds of households he was working in. So this was the kind of dilemma that I was put in, and it was a reality that I had to face at that time.

In this case, community attitudes and religious beliefs made it difficult for the employee to do his job:

LGBT people do not even get hired [in the healthcare industry]. There are patients who need to be washed, to be bathed and dressed, and they reject an LGBT employee. So you, as the project manager, find that there are a whole lot of people who want to be employed, but you cannot hire them because they will not be able to work in the community ... In most communities they will say, 'Why should we have this when we do not even have gays and lesbians in our community?' When you explain [that the community has] people with different sexualities, they will say, 'We are all Christians so there is no need to speak

Multiple participants reported colleagues or managers saying 'This is just the way that things are done!' Such statements can be used to foreclose discussions about gender stereotyping or to avoid responsibilities in relation to combating discrimination.

about gender equity or to even speak about sexuality in this space.'

Entrenched norms can make it difficult for people to accept diversity or to adjust work practices. Multiple participants reported colleagues or managers saying 'This is just the way that things are done!' Such statements can be used to foreclose discussions about gender stereotyping or to avoid responsibilities in relation to combating discrimination. Winnie, a heterosexual manager at an investment company, feels that this will only change with greater visibility of LGBT employees. Here she shares a story about a gender-nonconforming colleague:

My experience in Pretoria is with a lesbian who presents as a man, wearing expensive clothes – Pringle or Crockett & Jones – and you forgot that this is not a man. She was proud to introduce the girlfriend and she spoke about 'my wife.' You got interested in her life, in who she is, because she embraces who she is, she talks, walks and dresses like a man. She would be a beautiful man. I learnt to respect that she was not worried about what people said about her. She is being who she is regardless of anything. People will embrace what you believe in, and if you are doubtful others will be doubtful.

Yet Winnie's suggestion that LGBT workers need to be more open and proud is at odds with Jabu's observation that being open can prevent LGBT workers from doing their jobs. This may be due to sectoral differences – for instance, openness may be more difficult in the healthcare industry than in finance. Winnie's comment also highlights an interesting paradox: without proper support from colleagues and managers, LGBT employees are

The BCEA uses a heteronormative framing in its understanding of family and parenting, and this often makes it difficult for lesbian, bisexual and gender-nonconforming women to care for their children, parents or partners.

unlikely to come out; but support and policy reform will only take place once LGBT employees have come out.

Family and parenting rights

Five of the participants in this study are parents and all of them spoke of various forms of discrimination. Some reported that fellow workers felt that lesbians should not fall pregnant or be parents. The following comment was recorded at the Limpopo dialogue:

I had a child then as a lesbian because I wanted to have a baby ... This made them unhappy and they started calling me a fake lesbian because I had a child.

Accessing family responsibility leave was identified by participants as a major problem. As indicated above, the BCEA uses a heteronormative framing in its understanding of family and parenting, and this often makes it difficult for lesbian, bisexual and gender-nonconforming women to care for their children, parents or partners.

Sometimes your child is sick, but if they know that you are a lesbian they start asking: 'Why is she

“If I were heterosexual, I would have gotten sympathy and been granted permission to take care of my partner.”

having a child? She said she is lesbian.’ So it is like you do not have the right to have a child. If you ask for leave because your child is sick, it becomes a long process. I am entitled to that leave ... They make it seem like you are lying. It is like you are not supposed to have a family. It is a struggle for LGBT workers.

Nkele had direct personal experience of this type of discrimination – her employer would not allow her to care for her sick girlfriend:

I was working in the doctor’s surgery and it happened that my girlfriend got very sick. She was transferred to a hospital. She was critical and needed assistance when she was discharged, and was provided with a doctor’s report indicating that she needs care and rest. I requested a few days of family responsibility leave in order for me to take care of her. My employer said no. This was a closed discussion because I am lesbian. If I were heterosexual, I would have gotten sympathy and been granted permission to take care of my partner.

While family responsibility leave does make provision for the care of a sick child, it does not guarantee time off to take care of a partner or spouse; it is only in the case of a partner’s death that the employee has a legal right to access the leave days. However, family responsibility leave has been expanded in some workplaces to allow for situations like the one Nkele describes above.

In Nkele’s case, there was no direct protection from the law, but it is likely that if she identified as heterosexual, her relationship would have been valued differently. Nkele has witnessed this flexibility when her heterosexual colleagues have requested leave to care for their partners:

I was not married while all my colleagues were married and had children. I didn’t have a child so it means that I worked for eleven years without taking leave. All my colleagues have been taking leave because they have children or had to attend to a family matter. They always took family responsibility leave if someone in the family or extended family passed away. They even took leave even when their husbands or partners were sick. I remember the day I took leave because my girlfriend’s father passed away. I took leave because I wanted to attend the funeral. When I returned to work all of my colleagues were angry with me. They accused me of going to a party in Mpumalanga.

Phiwe is in a relationship with a butch lesbian. She believes that butch lesbians, because of their gender expression and role in a relationship, should be able to access paternity leave:

I am planning to have more kids and, if my partner is working, I would expect her to be there for me. They [butch lesbians] do not just look like men, they also have male responsibilities, and this has to be taken seriously. It is not about feelings; it is about lifestyle, the kind of lifestyle that I live. We also have heads of households: my partner is the head of the house, so if I had to fall pregnant ... I would expect my partner next to me. They [butch lesbians] deserve paternity leave.

CONCLUSION

THE ACCOUNTS SHARED above make it clear that LGBT workers in South Africa continue to face harassment, discrimination and exclusion, despite the legislative protections in place. Some – though few – collective bargaining agreements with anti-discrimination clauses are also in place, but these appear to have had little impact on the lives of lesbian, bisexual and gender-nonconforming women. This allows for the prejudice and discrimination described by the participants here. It is clear that employers are uninformed about how best to foster inclusion in the workplace and about how best to prevent and stop discrimination when it does occur. The participants here responded in numerous ways to their oppression, sometimes by using their senior status or by developing a strong personality, and at other times by engaging in workplace activism. Despite these efforts, the participants struggle to access family, parenting and caring rights, and are excluded from fully participating in their work environment.

The anecdotes captured in this paper show how these participants face workplace discrimination on multiple levels – as women, as lesbians, as gender-nonconforming people. This discrimination also takes multiple forms: from pressure on how to dress or act, through to expectations about what tasks people are capable of performing. In extreme cases, it may even result in sexual or physical violence. Some women were even denied employment simply because of their sexual orientation or gender expression, leading a few of them to give up on the search for work. Their productivity, opportunities for career progression and ability to contribute as active and respected members of the workforce were severely compromised. Of particular concern is the lack of access to family and caring leave, despite the legal recognition of same-sex relationships in South Africa. This impacted on participants' personal lives

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and on their mental and physical wellbeing. The response of participants to these bleak workplace scenarios ranged from despair and chronic unemployment, to activism and a desire to create change.

Despite this commitment from participants to bring about change, the onus should not be on members of a marginalised community to fight for their rights in isolation. Rather, new norms need to be created, perceptions and attitudes need to be shifted, and structural constraints need to be eliminated. This cannot be a once-off act or event, but must rather stem from a combination of factors, such as changes to workplace policies in tandem with collective actions by individuals and groups that challenge existing structures over a period of time. Government, trade unions, employers and civil society all have key roles to play in transforming

our workplaces into safer, more inclusive and more egalitarian spaces.

This discussion paper will be distributed to a wide range of stakeholders, and it is hoped that all of these stakeholders will provide input and comment. Furthermore, in order to foster this process, consultative meetings on the discussion paper will be held after its release. The discussion paper has been developed alongside *Equality is Everyone's Business: Eliminating Homophobia and Transphobia in South African Workplaces*, a simple-to-use guide for workers, employers, HR managers, trade unions and NGOs. This booklet provides an accessible overview of existing protections and legislation, as well as practical advice on raising a complaint, seeking help or responding to cases of discrimination.

Government, trade unions, employers and civil society all have key roles to play in transforming our workplaces into safer, more inclusive and more egalitarian spaces.

RECOMMENDATIONS

A NUMBER OF CLEAR recommendations emerged from the dialogues and focus groups. These recommendations are relevant for a range of stakeholders, including government, trade unions, employers, civil society and research institutions. They have been listed below according to the stakeholder group.

WORKPLACE RECOMMENDATIONS

- Develop education interventions around LGBT issues that conscientise and inform people
- Engage with workers who have LGBT family members and friends
- Develop awareness programmes about human rights as they apply to all individuals
- Develop and implement programmes on sexual harassment, including sexual harassment targeting LGBT individuals
- Encourage young people to get involved in LGBT workplace initiatives and programmes
- Ensure that workers are free to use facilities matching their gender identity (for instance, toilets and changing rooms)
- Provide inclusive paternity leave
- Develop employee assistance programmes that provide expert services and counselling for LGBT people
- Develop and provide LGBT safety packs in the same way that male condoms are made available
- Include LGBT realities in the provident fund nomination forms
- Display LGBT-inclusive materials in the workplace to improve access and visibility
- Foster visibility in the union and encourage the election of LGBT shop stewards
- Change workplace policy language: no single focus on 'he'/'she', use 'partner' instead of 'husband'/'wife' and make reference to same-sex relationships
- Include an LGBT anti-discrimination clause in workplace policies
- Ensure that the dress code is not discriminatory and that it is not gender specific
- Develop LGBT-friendly workplace policies
- Review employee assistance programmes to ensure that LGBT rights are included, such as LGBT-affirming counselling.

RECOMMENDATIONS FOR GOVERNMENT

- Ensure that all reporting mechanisms, such as those from the Department of Labour, make specific reference to LGBT discrimination
- Develop inclusion in the BCEA and ensure that the definition of 'spouse' includes same-sex partners (including in the provision of family responsibility leave)
- Develop LGBT inclusion in provident fund provisions
- Initiate and enforce these LGBT provisions in line with the Constitution.

RECOMMENDATIONS FOR EMPLOYERS

- Provide training on LGBT issues for HR staff
- Send out clear messages that the company prohibits and will not tolerate discrimination
- Create and implement an anti-harassment policy and programme
- Create and implement an anti-discrimination policy and programme
- Implement education programmes aimed at combatting discrimination; make them available to all levels of the workforce and to clients
- Ensure that wellness programmes include counselling services for LGBT workers who have experienced discrimination
- Ensure that LGBT workers and their partners have equal access to benefits and leave
- Ensure that all relevant policies include same-sex partners and that the definition of 'family' includes same-sex couples and their children
- Ensure that there are no discriminatory gender-specific dress codes in the workplace.

RECOMMENDATIONS FOR CIVIL SOCIETY

- Engage with the Department of Labour on LGBT rights in the workplace
- Develop solidarity programmes with the unions on LGBT rights in the workplace
- Raise the issue of LGBT workplace rights with relevant labour organisations
- Lobby for the development and full implementation of LGBT workplace policies
- Provide staff training on LGBT workplace issues
- Nominate an in-house focal person for LGBT workplace issues
- Become familiar with the processes of the Commission for Conciliation, Mediation and Arbitration (CCMA), especially as these relate to LGBT workplace issues
- Become familiar with relevant support organisations working in the area, such as the Labour Research Service (LRS)
- Provide appropriate referrals where necessary
- Develop materials and support services for LGBT employees
- Apply for funding for LGBT workplace initiatives.

RECOMMENDATIONS FOR RESEARCHERS AND RESEARCH INSTITUTIONS

- Develop further and larger scale research projects on LGBT issues in the workplace
- Develop the knowledge base in the area as a tool for advocacy
- Source funding for LGBT workplaces projects
- Input in the development of comprehensive policy in this area.

REFERENCES

EI-PSI Sexual Diversity Forum (2011). 'EI-PSI Sexual Diversity Forum, July 18 and 19, 2011, Cape Town, South Africa' (press release). Available at www.world-psi.org/sites/default/files/documents/research/psi_ie_sexual_diversity_forum_article.pdf. Accessed April 2015.

GALA & the LRS (2013). *Workplace Rights Belong to Everyone: Addressing Homophobia in the Workplace*. Available at www.lrs.org.za/docs/Workplace%20Rights%20Belong%20to%20Everyone%20Workshop%20Report%2011-12%20April%202013.pdf. Accessed April 2015.

Hunt, Gerald (2015). 'Going Global: International Labour and Sexual Orientation Discrimination'. In F Colgan & N Rumens (eds), *Sexual Orientation at Work: Contemporary Issues and Perspectives*. New York: Routledge.

Human Rights Watch (2011). *'We'll Show You You're a Woman': Violence and Discrimination against Black Lesbians and Transgender Men in South Africa*. New York: Human Rights Watch.

International Labour Organisation (2013). *Discrimination at Work on the Basis of Sexual Orientation and Gender Identity: Results of Pilot Research*. Geneva: International Labour Office.

International Labour Organisation (2011). *Equality at Work: The Continuing Challenge*. Geneva: International Labour Office.

Nampak LTD and Union Network International (2006). 'Global Agreement on the Respect of International Standards between Nampak LTD and Union Network International'. Available at ec.europa.eu/employment_social/empl_portal/transnational_agreements/Nampak_GlobalAgreement_EN.pdf. Accessed April 2015.

Nath, Dipika (2014). 'Launch of National LGBTI Programme' (press release). Foundation for Human Rights. Available at www.fhr.org.za/latest_news/launch-national-lgbti-programme. Accessed April 2015.

Nxawe, Siyanda (2011). 'National Inspector's Conference Strategic Overview of Labour Inspections in South Africa' (conference presentation). Available at www.labour.gov.za/DOL/downloads/documents/useful-documents/occupational-health-and-safety/DDGNxawe.pdf. Accessed April 2015.

UN Human Rights Council (2011). *Discriminatory Laws and Practices and Acts of Violence against Individuals Based on their Sexual Orientation and Gender Identity*. UN doc A/HRC/19/41. Available at www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.41_English.pdf. Accessed April 2015.

APPENDICES

APPENDIX I

COSATU 2012 NATIONAL CONGRESS RESOLUTION

Sexual Orientation and Hate Crimes against Gay, Lesbian and Transgendered People (<http://www.cosatu.org.za>)

Noting that:

- 1 Over the past 10 years there has been an upsurge of hate crimes against gay, lesbian and transgendered people in South Africa and internationally;
- 2 These hate crimes are part of a toxic family of discriminations (racism, sexism, homophobia, xenophobia, Islamophobia etc.) that if left to fester will be used to divide the working class.
- 3 The recent decapitation of a gay man in the Northern Cape and the attack on a young woman who kissed her partner in the Carlton Centre are just the tip of the iceberg;
- 4 Rape and murder of lesbian women is increasing in our communities;
- 5 Only 1 in 9 rapes are reported in South Africa.
- 6 Homophobia is rife in our society and workplace

Believing that:

- 1 All people should be free to live their lives as they choose without fear of attack and that the rights not be discriminated on the basis of sexual orientation is enshrined in South Africa's Constitution;
- 2 COSATU should be a champion of these rights;
- 3 There is a need to arm shop stewards and leaders with the tools and consciousness to be able to address these forms of discrimination at workplace level
- 4 COSATU must develop a coherent campaign throughout the affiliates on this issue;

Therefore resolves to:

- 1 Call upon Government to take a firm stand on the rights of lesbian, gay, bisexual, and transgender (LGBT) people and in particular to speak out unequivocally against hate crimes in our communities;
- 2 Demand that Government holds accountable any political figure who encourages the idea that LGBT people are not normal and should be deprived of rights;
- 3 Demand that Government brings legislation before parliament dealing with hate crimes;
- 4 Demand that the police and magistrates be sensitised to these issues and be trained to deal with victims;
- 5 Demand that the National Hate Crimes Task Team set up to deal with hate crimes against LGBT people and set up by the Ministry of Justice and Constitutional Development in May 2011, is properly funded and becomes a campaigning body and not just a talk shop;
- 6 Develop a COSATU strategy & campaign document to ensure that no member of any affiliate is unable to declare his/her sexual orientation.
- 7 Develop education strategies aimed at combating homophobia and discrimination on the basis of sexual orientation
- 8 Reach out to organisations in the LGBT sector and other organisations who have taken a stance on hate crimes as a way of implementing the above resolution.

APPENDIX II

PRESS STATEMENT FOLLOWING THE LIMPOPO DIALOGUE SESSION

LGBTI RIGHTS NEED TO BE RECOGNISED IN THE WORKPLACE: 'WE ARE HATED FOR BEING WHO WE ARE.'

July/August 2014

Lesbian, gay, bisexual and transgender and intersex (LGBTI) workers battle discrimination and humiliation in the workplace in South Africa, despite the fact that the country's Constitution forbids this.

This was one of the findings that emerged when members of the Limpopo LGBTI group Proudly Out met with trade unionists, NGO staff and representatives from the Commission for Gender Equality (CGE) and the South African Human Rights Commission (SAHRC) in Polokwane this month. The meeting, organised as a dialogue session, also revealed that some trade unionists were not completely aware of the workplace challenges that face LGBTI workers, and were unsure what the abbreviation LGBTI stood for. This made it difficult for them to stand up for LGBTI issues at work. However, they acknowledged the need for more discussion on the subject, and that while talking about sexuality may be foreign or uncomfortable for some, it was essential to educate themselves and their trade union colleagues.

The dialogue session, titled 'LGBTI Rights in the Workplace', was organised by the Labour Rights for Women (LRW) campaign, which included members from all four labour federations – COSATU, NACTU, CONSAWU and FEDUSA – as well as the Labour Research Service (LRS), Solidarity Centre and WageIndicator/Mywage. It was held at the Polokwane Royal Hotel in Polokwane, Limpopo Province.

'Discrimination is bad – employers want us to

dress a certain way, they want us to pretend to be what we are not. I am seen as a demon,' said one young lesbian member of Proudly Out.

Other members spoke of not being taken seriously in interviews for jobs because they did not look 'conventional', not being allowed Family Responsibility Leave if a partner was ill, being called names, and having colleagues shun them in spaces such as workplace bathrooms.

Trade unionists, in turn, stated that it was important for them to understand the issues of the LGBTI community, 'so that discrimination is not perpetuated'.

A spokesperson from the Commission for Gender Equality (CGE) said that many in the LGBTI community in Limpopo did not know all their rights, and that there was a fear of victimisation. From the point of view of the South African Human Rights Commission (SAHRC), it was felt that ignorance played a large part of the discrimination against LGBTI workers.

Amongst the issues that were identified were:

- **There has been an increase of hate crimes in Limpopo province, particularly against lesbian women.**
- **The province was seen to be very patriarchal and traditional.**
- **Due to traditional or Christian beliefs, members of the LGBTI community were often seen as 'demonic' and/or 'evil'.**

- Many members of the LGBTI community, particularly those in rural areas, did not know how to access their rights.
- People were scared to come out at work.
- There is a low level of information about the LGBTI community, resulting in a lot of ignorance and prejudice.
- People are often hired on the basis of how they look, so 'butch' lesbians or 'effeminate' men were discriminated against.
- There was a lack of understanding within the unions, hence a need to educate and sensitise members.

Amongst the calls to action were included:

- Ensuring that each and every workplace would work towards being aware of and protecting LGBTI issues.
- A need to sensitise gender co-ordinators working in unions to LGBTI issues.
- A need to recognise that there are important issues that need to be put on the collective bargaining agenda concerning LGBTI rights in the workplace

What is the Labour Rights for Women (LRW) campaign

Labour Rights for Women (LRW) is an international campaign that focuses on empowering women to defend their rights in the workplace. It also aims to strengthen women's participation and leadership in collective bargaining and social dialogue.

The key goals of the campaign are to:

- Increase awareness of women's labour rights as laid down in national legislation and collective agreements. Key issues include how to combine work and motherhood, and to achieve equal rights, equal pay, decent working conditions, and measures against workplace sexual harassment.
- Empower women workers to improve their employment situation.
- Improve legislation and enforcement of laws protecting women's labour rights.

In Africa, the LRW campaign runs in South Africa, Egypt, Uganda, Kenya and Tanzania. It is supported by COSTAU, FEDUSA, NACTU and CONSAWU, as well as the WageIndicator Foundation.

