

WORKPLACE RIGHTS BELONG TO EVERYONE

Addressing Homophobia
in the Workplace

WORKSHOP REPORT

Gay and Lesbian Memory in Action (GALA), Labour Research Service (LRS)
& the Civil Society Development Fund (Embassy of France in South Africa)

11-12 APRIL 2013, UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

WORKSHOP PARTICIPANTS

Please see attached register for full details

Day 1

12 participants from 8 trade unions:

South African Commercial, Catering and Allied Workers Union (SACCAWU)

South African Transport And Allied Workers Union (SATAWU)

Police and Prisons Civil Rights Union (POPCRU)

National Union of Mineworkers (NUM)

National Education, Health and Allied Workers Union (NEHAWU)

Chemical, Energy, Paper, Printing, Wood and Allied Workers Union (CEPPWAWU)

South African Municipal Workers Union (SAMWU)

Federation of Unions of South Africa (FEDUSA)/National Democratic Change & Allied Workers Union (NDCAWU)

2 participants from the Olaf Palme Centre

1 participant from the American Center for International Labor Solidarity (ACILS)

Day 2

9 participants from 4 trade unions:

South African Commercial, Catering and Allied Workers Union (SACCAWU)

Police and Prisons Civil Rights Union (POPCRU)

National Union of Mineworkers (NUM)

National Education, Health and Allied Workers Union (NEHAWU)

1 participant from the American Center for International Labor Solidarity (ACILS)

1 participant from the KZN Recreation Centre

AIMS OF THE WORKSHOP

- To share experiences and understandings of homophobic discrimination in society, in the workplace and in the trade union movement
- To raise awareness of the impacts of homophobia and discrimination in our society
- To develop practical strategies for combating homophobia in society, in the workplace and in trade unions – e.g. policies, workplace programmes, collective bargaining demands, etc.
- To forge links and foster solidarity between the LGBTI and trade union movements.

KEY ISSUES EMERGING FROM THE DISCUSSION

1. How to define our understanding of LGBTI

These discussions focused on the biological and social determinants of homosexuality. The 'L', 'G' and 'B' parts of the conversation were framed around sexual orientation, and the 'T' and 'I' around gender identity.

- *Lesbian*: women who are sexually and romantically attracted to other women
- *Gay*: men who are sexually and romantically attracted to other men
- *Bisexual*: a person who is sexually and romantically attracted to both sexes. This does not mean that one needs to have two partners at the same time
- *Transgender*: a person whose gender identify is not consistent with their physical sex – e.g. a male-born person

who identifies as a woman. Some transgender people choose to change part or all of their sex anatomy by taking hormone treatment and/or undergoing gender reassignment surgery, a procedure that is often called a sex-change operation. This allows the person to change his/her body to fit the gender the he/she identifies with.

- *Intersex*: a person who is born with a sex anatomy that is not clearly male or clearly female. This can be at the level of the reproductive organs inside the person's body, the sex organs on the outside of the body, or a combination of both.

1.1 Participant questions and discussions

Do same-sex practising people choose to be homosexual or are they born like that?

There is no one route to homosexuality, and research has failed to link homosexual behaviour to some biological explanation such as a particular gene. For some people, sexual and spiritual identity becomes one – e.g. a female sangoma who has a male ancestor demanding a woman for a sexual partner.

Why are some homosexual people not consistent – i.e. they only come out when they are older?

Heterosexuality – identities, behaviours, practices, etc. – is hegemonic. To 'come out', a person needs to find the courage to go against existing norms. Some people make choices about their sexual preferences later in life.

Does homosexuality mean men behaving like women and women behaving like men?

No. Gay men are men, and they can express their masculinity in different forms. Some may choose to be more effeminate, while others may choose to be more masculine. The same applies to lesbian women.

Is a bisexual someone who is confused with both sex parts?

An intersex person, as opposed to a bisexual person, might have aspects of both genitalia, with one form dominant. A bisexual person is not confused, but rather makes a choice to have sexual and romantic relations with either a man or a woman.

Is a transgender person both male and female?

A transgender person chooses one gender identity and lives with that identity. A transgender person is not both male and female

Can you tell if someone is intersex based on his/her looks?

There are many gender-nonconforming markers – e.g. a beard on a woman's face, a squeaky voice in a man, etc. One also needs to take into account sex chromosomes, external genitalia or an internal reproductive system that is not standard to either male or female bodies – all features that are usually not visible – which means one cannot just look at a person and decide that they are intersex.

2. Legal Framework: present and past

What we currently have:

- Section 9 in the Constitution, which is commonly referred to as the Equality Clause, is inclusive of sexual orientation
- The PEPUA Act 2002 (Promotion of Equality and Prevention of Unfair Discrimination Act) gives effect to Section 9 of the Constitution.
- The LRA (Labour Relations Act), EEA (Employment Equity Act) and BCEA (Basic Conditions of Employment Act) all outlaw discrimination, including discrimination on the basis of sexual discrimination, and create conditions to ensure that same-sex partners are included in employee benefits.

How we got here:

The key advocate for the acknowledgment of LGBTI rights in the post-1994 democratic South Africa was the National Coalition of Gay and Lesbian Equality (NCGLE). The NCGLE also played a crucial role in the fight for LGBTI rights in the workplace and, as part of its Equal Rights Project, developed a code of good practice called 'Sexual Orientation and Diversity in the Workplace'. The coalition collected a number of cases of sexuality-based discrimination in the workplace, such as those involving breach of employment contract, dismissal, and discrimination against same-sex couples in relation to pensions and medical aid. In 1998, the NCGLE hosted a conference on LGBTI rights in the workplace. A range of trade unions attended the event, and the code of good

practice was discussed. The work of the NCGLE was crucial in bringing issues of sexual orientation and the workplace to the fore, and created a space for the legal protections that followed.

Dealing with sexuality-based discrimination within unions and the workplace has a history dating back to the early 1990s, a time when the union and LGBTI movements were in conversation.

The work of NCGLE revealed that even though progressive laws were being promulgated and some level of engagement was taking place with organised labour, few cases of discrimination were being reported and very little internal trade union education on LGBTI rights was taking place.

2.1 Participant questions and discussions

What is the nature of discrimination for LGBTI people now, and are legal protections being used?

- Discrimination often begins in the interview process – e.g. the women presenting for the interview does not look like a conventional woman and, as a result, is discriminated against.
- Promotions can be delayed, especially when it is in relation to representing the company.
- Sharing workplace amenities – e.g. the homophobic belief that all homosexual people want to force themselves on everyone sexually makes people fear sharing spaces like rest rooms.
- Participating in social activities at work presents a challenge for a worker with a same-sex partner

Should people ‘come out’ at work, and if they do not come out, how can the trade union protect them?

People are not coming out because of the homophobic atmosphere they experience. This can range from jokes to harassment and even threats of ‘corrective rape’, thus making the workplace feel very unsafe for the person. People also often believe that trade union leaders and members are not able to protect them against discrimination because the union members themselves hold homophobic beliefs.

In the workshop, some union leaders felt that they can only address discrimination if there are workers who are willing to come out. At the same time, the question was raised as to how trade unions can create an environment conducive to coming out.

Why, if progressive laws are in place, do people not feel protected?

- In some cases there is a lack of awareness around how to translate the anti-discrimination laws into workplace codes or collective bargaining demands, or even trade union policy.
- Even where there is an awareness of the law, this does not automatically lead to changes in attitudes and behaviours. One cannot only react when discrimination has happened, but must rather find ways of dealing with a range of informal engagements that shape how the formal processes are related to.
- Dominant heterosexist culture allows for discrimination to persist and in this way undermines the law.

3. Hate crimes – ‘lesbians speaking about rape’

After watching two video clips – one of a physically and sexually assaulted women talking about the attack; the second of women who were raped as well as male community members responding – participants raised and discussed the following points.

We are dealing with the broader issue of culture and how it reinforces gender stereotypes. When these stereotypes are threatened, men in particular feel threatened, or somehow feel that they are losing power and control. We can see how this can turn into violent responses: some of the men being interviewed in the video advocated for men to rape lesbians so as to make them straight. The men in the video seem to be ordinary men – it could be anyone, the person sitting next to me or you on the taxi.

Even though gay men also experience violence, it seems that black working-class women are more at risk. From the video, it also seems that in these case of violent rape and assault, it is black working-class men who are the perpetrators – men who live close to the victim, men who the victim even seems to know.

As union leaders, we need to ask ourselves: Are these men and women our members, or perhaps likely to become our members? Are we offering them some kind of alternative way of living in this world? What is our responsibility as a trade union?

Even though what we have seen in the videos is horrific, we must also start looking at where change has taken place. There is, for example, same-sex marriages taking place in our townships, and people in these community are part of the celebrations.

4. Exploring how to make change in the workplace

In this part of the workshop, we unpacked responses to three case studies.

CASE STUDY 1: PARENTING RIGHTS

A female worker has been living with her life partner for the past ten years. Her partner is the biological mother of an eleven-year-old daughter. The worker has been co-parenting the child since the child was one year old. In all her years of co-parenting, she has been unable to access family responsibility leave when required.

At the beginning of this year, the woman married her partner and wanted to access the travel concession, a company perk extended to employees and their families. The company denied her the travel concession on the grounds that this was not a right extended to same-sex couples.

Discussion points:

- What forms of discrimination can be identified in this story?
- What aspects of the law can assist you in addressing these discriminations?
- What steps would you take as a worker leader or union official to address such discrimination?

Participant responses and discussion

- This is a clear case of discrimination in relation to family responsibility leave and company employee benefits, such as travel concessions. By refusing to accept her same-sex marriage, management is behaving unconstitutionally, and thus illegally.
- We would need to work within the LRA, EEA, BCEA and PEPUDA, given that marriage or a civil union of a same-sex couple has equal status in relation to rights and benefits.
- We would need to address this on a number of levels: at an internal union level, we need to make this discrimination part of our constituency discussion, publicise the issue and try to raise awareness; at a workplace policy level, we need to negotiate for clearer guidelines around improving the rights of LGBTI people above the minimum level in the BCEA; and at a legal level, we could lay a grievance and, if necessary, go as far as the labour court.

CASE STUDY 2: INTIMIDATION AND HARASSMENT IN THE WORKPLACE

A young female worker who is gender nonconforming and a lesbian works in the municipality, where 96 per cent of the workers are men. The few women workers find themselves being constantly sexually propositioned by the male workers. The lesbian worker has not revealed her sexual orientation to any of her fellow workers and chooses to remain aloof from any discussions about her private life. She has also shown no interest in the sexual advances made by her male colleagues.

Even without revealing her sexual orientation, the worker has found herself being harassed, intimidated and even threatened with rape by her fellow workers, men who are also her union comrades. Her gender-nonconforming dress and her attitude to sexual advances has made her a target for the homophobic attitudes of her fellow workers, both male and female. It is also important to note that the worker initiating much of the gossip about her is a fellow female worker.

For the lesbian worker, life in the workplace has become hell. Management, while claiming to be supportive, has failed to address the increasing intimidation. The worker has tried to get the union to intervene at a branch level, but even though there have been promises of intervention, nothing has happened.

Discussion points:

- If you were to describe to a colleague the kind of discrimination this young woman is experiencing, how would you describe it?

- What parts of the law do you think address this form of discrimination?
- What steps would you take as a worker leader or union official to address such discrimination?

Participant responses and discussion

- The woman is experiencing an extreme form of homophobia that has led to discrimination, intimidation and threats of physical violence.
- As a legal issue, the discrimination would fall under the broader anti-discrimination statutes in the Constitution and related labour laws. The intimidation and threats of physical violence could also be taken up as criminal charges.
- The union has a responsibility to ensure that the employer provides a safe and open environment for *all* workers, so this can be part of workplace negotiations. The union has the responsibility to assist the victim (whether she is a member or not) feel safe to speak openly about what she is experiencing and to feel supported. The union has the dual responsibility of raising awareness among its members, but also of sanctioning any member who infringes on the rights of others. Lastly, the union has the responsibility of creating internal anti-homophobic policies and procedures.

CASE STUDY 3: TRANSGENDER IDENTITY IN A UNION SPACE

A transgender man – transgender: persons who live as a gender other than the gender assigned to them at birth whether they have chosen to make use of surgery and/or hormones or not – is participating in a residential trade union workshop and all the participants are sharing rooms. He is known as a man in the union.

The transgender man's roommate approaches you as a trade union official to indicate that he has noticed what he feels to be strange behaviour and that he wants to move out of the room. As the official, you speak to the transgender man, who takes you into his confidence and explains that he has transitioned and is now a man, even though he has not had any surgery.

Discussion point:

- As the union official, how would you respond in this situation?

Participant responses and discussion

- This is an area where we will need to raise awareness and to educate, such as by developing fact sheets and incorporating the topic into the gender equality program of the trade union. In this particular case, as union officials, we would need to gain the trust of the transgender person and get an idea of the kinds of measures we could put in place to assist him in feeling safe and able to participate in the trade union.

MOVING FORWARD

The discussion centred on how to engage LGBTI issues in the workplace, focusing particularly on what can be done immediately to pave the way for broader engagements.

The International Day Against Homophobia (IDAHO), an annual celebration on 17 May, could be a day that unions consider in their political calendar and use as an opportunity to discuss issues of sexism and homophobia in the workplace. Currently, Gauteng has three pride celebrations: one each in Johannesburg, Soweto and KwaThema. In these pride marches, organised labour could support other fellow activists in raising awareness and condemning homophobia and transphobia in our societies. Lastly, the HIV voluntary testing campaigns in workplaces should also be inclusive of same-sex-practising people. Even in the absence of known LGBTI people, the HIV counselling team should be equipped to counsel LGBTI people on HIV, STIs and TB, taking into account the specific vulnerability of a person's sexual orientation.

The workshop sought to further engage unions on practical interventions regarding discrimination on the

basis of sexual orientation and gender identity. In 2012, COSATU, as part of its 11th National Congress, passed the Resolution on Sexual Orientation and Hate Crimes against Gay, Lesbian and Transgender People. Proposed by NUMSA/SAMWU and DENOSA, the resolution advocates for the tools and consciousness to address LGBTI discrimination among union members. The resolution listed several demands such as legislation, political will and open condemnation of such violations, sensitisation training, transparency of the National LGBTI Task Team and education strategies for government to consider. We welcome such positions and further advocate for ongoing discussions and interventions that seek to destabilise the oppression, marginalisation and violence perpetrated against women, LGBTI and gender-nonconforming people.

ABOUT THE ORGANISERS

Gay and Lesbian Memory in Action (GALA) is an important centre for LGBTI culture and education in Africa. GALA's mission is, first and foremost, to act as a catalyst for the production, preservation and dissemination of new knowledge on the history, culture and contemporary experiences of LGBTI people. In recent years, GALA has also strengthened its commitment in areas such as education and movement-building. Through GALA's different areas of work, the organisation makes an important contribution to the achievement and development of the human rights of LGBTI people and of social justice more broadly.

For more information about GALA, please see www.gala.co.za or contact +27 11 717 4239

GALA partnered with Labour Research Service (LRS) for this workshop. LRS specialises in research, dialogue-building and developmental projects with the broad aim of strengthening civil society, particularly in the world of the work. LRS' mission is to promote and enhance the full and active participation of working women and men in the political and socio-economic activities in South Africa. This is achieved through developing organisational and leadership capacity of trade unions and labour-focused social organisations to enable collective bargaining on incomes and social livelihood issues.

For more information about LRS, please see www.lrs.org.za or contact +27 21 447 1677

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This workshop and report were developed by Nomancotsho Pakade (GALA), Nosipho Twala (LRS) and Nina Benjamin (LRS).



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