

**Keynote Address by the Deputy Minister of Justice and Constitutional
Development,
the Hon JH Jeffery, MP,
at a workshop on Regional LGBTIQ+ Rights,
hosted by the Southern African Liaison Office (SALO) and the Rosa
Luxemburg Foundation,
1 July 2021**

Good morning, bom Dia, mangwanani.

It is, as always, a pleasure to be able to join SALO and the Rosa Luxemburg Foundation at these dialogues.

As you know, this year, here in South Africa, we are celebrating the 25th anniversary of our Constitution – a Constitution which has been called ground-breaking as it was the first in the world to prohibit discrimination based on sexual orientation.

Since then, we've seen ground-breaking judgments by our courts and passed ground-breaking laws to prevent discrimination on the basis of sexual orientation, gender identity, gender expression and sex characteristics.

There have also been important developments in the region over the last decade.

Many of you will be familiar with the well-known LEGABIBO registration case in Botswana, where activists applied to register their organization called *Lesbians, Gays and Bisexuals of Botswana (LEGABIBO)*.

The registrar rejected their application on the grounds that the application would contravene the Societies Act, by operating for an "unlawful purpose or other purpose prejudicial to, or incompatible with, peace, welfare or good order in Botswana."

In 2014 the Botswana High Court found that the refusal to register the group was a violation of the applicants' rights to equal protection of the law.

The court held that gay, lesbian and bisexual people have the same rights as anyone else, regardless of laws that criminalize consensual same-sex conduct. In 2016 the Botswana Court of Appeal upheld the High Court's decision and ruled that the refusal by the government to register LEGABIBO was unconstitutional.

In 2019 the High Court of Botswana ruled that consensual sex between adults of the same sex was no longer criminalised.

Globally the number of countries with anti-LGBTI laws has dropped from 76 to 71.

But to fully realize LGBTIQ+ rights require more than laws and court judgments.

It means that SOGIESC rights must remain high on the public agenda.

Furthermore, the importance of ensuring an enabling environment and democratic space for human rights defenders and civil society organisations working for the protection of the SOGIESC rights is critical to ensure that they carry out their work safely and effectively without facing violence, threats and persecution.

In March 2016 the South African Human Rights Commission, supported by the South African Government and members of civil society hosted a three-day *African Regional Seminar on Finding Solutions for Addressing Violence and Discrimination against Persons Based on Sexual Orientation, Gender Identity and Expression*.

The basis of the seminar was Resolution 275, which was adopted by the African Commission on Human and Peoples' Rights at its 55th Ordinary Session in 2014, entitled "Protection against Violence and other Human Rights Violations on the basis of their real or imputed Sexual Orientation or Gender Identity".

It was an historic event – the first of its kind in the region, there were attendees from 54 countries who spoke about their own experiences in their countries.

I still clearly recall one panellist, from Sierra Leone, who shared her experience of losing her daughter to violence. Her daughter, an LGBTI activist in Sierra Leone, was brutally murdered after being threatened by community members. Despite the threats and the danger to both their lives, the mother had continued to encourage her daughter's support of the LGBTI community.

A declaration – called the Ekurhuleni Declaration - was adopted at the end of the seminar, which sought to address issues such as -

- changing perceptions and creating awareness;
- violence and discrimination in accessing education;
- economic justice;
- health and psycho-social support;
- legal support for victims of violence and discrimination and their families;
- secondary victimisation in the criminal justice system and border control systems, and
- the importance of accurate data on incidences of violence and discrimination.

It is now 5 years' later and it would indeed be interesting to see whether, and to what degree, the issues highlighted in the Declaration have improved in the region.

For many of us in the region, the fight for LGBTIQ+ rights may seem to be, at times, a case of “one step forward, two steps back”.

Four years after adopting Resolution 275, in August 2018, the African Commission on Human and Peoples' Rights withdrew an NGO, called the Coalition of African Lesbians (CAL), of their observer status.

Observer status is a requirement for certain types of participation in the ACHPR's activities and sessions.

This happened after the African Union Executive Council asked the ACHPR to make a decision on observer status based on "fundamental African values, identity and good traditions" and expressly asked it to withdraw CAL's status.

In March this year, Angola enacted a new penal code - which was passed in 2019 and removed a provision criminalizing same-sex relationships. Angola is now one of only seven African countries with some form of anti-discrimination provision.

Whilst Malawi held its first ever Pride parade this past Saturday, homosexuality is still a criminal offence in Malawi.

In April this year, a group of activists marched to the Zimbabwean consulate in Cape Town, demanding rights for LGBTI persons and advocating for the repeal of section 78 of the Zimbabwean Constitution which criminalises homosexuality. However, upon reaching the consulate, the receiving official allegedly refused to sign the receipt of the memorandum and refused to give his name.

In May this year, Uganda became the 33rd African country to criminalise same-sex acts.

What does this tell us?

As Tanveer Jeewa of the International Commission of Jurists recently wrote –

"Despite most African countries having inherited the "unnatural offences" laws from the British Empire, French and Dutch colonial powers during colonisation, Africa seems to be moving backwards, with 61% of African countries now being unsafe for LGBTI people."

And, most importantly, she says *"sadly, even in countries where the legal framework is progressive, homophobia remains pervasive."*

This is our experience in South Africa as well.

Despite constitutional and legislative protections of equality, we do know that there are on-going threats and violations against the rights, wellbeing and safety of LGBTIQ+ and gender non-confirming persons in South Africa.

Individuals in these vulnerable communities continue to be subjected to hate crimes and gender based violence.

Our National Task Team on the Rights of LGBTI Persons was established in 2011 by the Minister of Justice and Constitutional Development with the aim of strengthening government's ability to respond to the needs of LGBTI persons and to strengthen the capacity of civil society organisations to deliver related services.

Our NTT is a successful partnership between government and civil society and was named by the UN's Office of the High Commission on Human Rights as a best practice model and international case study of government and civil society co-operation in order to promote and protect the rights of LGBTI persons.

The NTT's Rapid Response Team tracks pending cases of anti- LGBTIQ+ crimes in the criminal justice system and effectively monitors these cases to ensure that they are properly investigated, that arrests are made and that prosecutions follow.

Later this afternoon Steve Letsike and I, in our capacity as co-chairs of the NTT, will be addressing a media briefing in response to the recent spate of violent attacks against LGBTIQ+ persons in our country.

Many of you would have seen recent media reports of a number of extremely concerning attacks on members of the LGBTIQ+ community.

At the moment we have approximately 42 pending LGBTIQ+ hate crimes on our tracking template and we are actively working with the South African Police Service, the National Prosecuting Authority and in partnership with civil

society bodies to ensure that these cases move forward and that survivors receive the necessary support services.

We are also working with European Union and are aiming to host an important SA-EU Policy Dialogue on Trans and Intersex Persons later this year.

No law can ever be a panacea to rid society of *all* forms of discrimination or hate. We can have the best laws, but our real challenges are in implementation and in changing societal attitudes in our communities.

Changing societal attitudes is the only way to ensure that persons are not victims of violence or discrimination in their daily lives on the grounds of their sexual orientation, gender identity, gender expression or sex characteristics.

We need to change the perception that being gay is somehow “un-African.”

We need to seriously address issues around toxic masculinity and patriarchy.

We need to get the message out that being gay or trans or queer does not infringe on any other person’s rights.

What else do we need to do? I would argue that there are four elements that are essential—

- political will (to be able to put the necessary laws on the statute book),
- policy measures and administrative measures to give effect to such laws,
- a criminal justice system which is geared to give effect to the political will and policy measures, and
- building communities which respect and embrace diversity and inclusion and challenging and engaging sections of those communities that are homophobic.

And I do believe that attitudes are changing, albeit it slowly.

Between 2012 and 2015, there has been a tenfold increase in the number of South Africans who “strongly agree” with allowing same-sex marriage.

Eight out of 10 people said they have not – nor would they ever consider– verbally or physically abusing someone who was gender non-conforming.

These positive changes come about because of the work being done on the ground. It’s because of activists and civil society organisations, like those represented here today - who continue to speak out honestly and openly about their experiences, who continue to advocate that LGBTIQ+ rights are human rights - that we are moving forward.

I thank you.