



The International Journal of Human Rights

Publication details, including instructions for authors and subscription information:

<http://www.tandfonline.com/loi/fjhr20>

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Available online: 21 Jun 2011

To cite this article: Luis Abolafia Anguita (2012): Tackling corrective rape in South Africa: the engagement between the LGBT CSOs and the NHRIs (CGE and SAHRC) and its role, *The International Journal of Human Rights*, 16:3, 489-516

To link to this article: <http://dx.doi.org/10.1080/13642987.2011.575054>

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Tackling corrective rape in South Africa: the engagement between the LGBT CSOs and the NHRIs (CGE and SAHRC) and its role

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The present article analysed whether or not the engagement between the LGBT CSOs and the NHRIs would be an effective alternative to tackle the problem of corrective rapes, due to the unworkable relationship between the LGBT CSOs and the government. Findings showed first, that there was indeed a role for this engagement; secondly, that this engagement would help to tackle the problem of corrective rape and other hate crimes against LGBT people; thirdly, that it would be the best alternative to the present unworkable relationship between the LGBT CSOs and the government; fourthly, that the engagement between the LGBT CSOs and the two NHRIs (the CGE and the SAHRC) would put pressure on the government to act on the issue; and fifthly, with this engagement, the LGBT CSOs would be able to place corrective rape and other issues affecting LGBT people right at the heart of the human rights agenda.

Keywords: national human rights institutions; corrective rape; South Africa; LGBT

Introduction

Despite the protection and legal equality of women and LGBT (lesbians, gays, bisexuals and trans) people, the social reality is quite different. Gender-based violence is a widespread problem in South Africa, which has the highest rate of rape in the world. And LGBT people are frequently attacked, both verbally and physically, because of the widespread intolerance and prejudice against them in the population.

Discrimination on the grounds of race, gender and sexual orientation resulted in the phenomenon of corrective rape and other hate crimes against black lesbians. This expression is used to describe ‘the sexual violence perpetrated for the purpose of supposedly “curing” a person of their real or perceived sexual orientation and/or gender identity’.¹

The inability of the South African government to solve the country’s rape problem, along with its own homophobic stance make it very unlikely that any measures to solve the problem of corrective rape will be taken. At the same time, the power of the LGBT CSOs (civil society organisations)² to influence the government on their own is quite limited.

One possible solution to force the government to tackle this phenomenon is for the LGBT CSOs to engage with the CGE (Commission for Gender Equality) and the SAHRC (South African Human Rights Commission). As NHRIs (National Human

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Rights Institutions), both are in a privileged position between government and civil society, and have the political power and moral authority required to force the former to address the issue of corrective rape. Engagement between the LGBT CSOs and these two NHRIs is, however, infrequent, not to say rare, and the work of the CGE and the SAHRC on LGBT issues and corrective rape is also very limited. Despite the great possibilities that this engagement offers for both LGBT CSOs and NHRIs for resolving this problem, none of the LGBT CSOs interviewed have reflected on how to take advantage of it.

It is important to mention here that in this article, the term engagement comprises two different but related aspects: engagement as collaboration and engagement as confrontation. Both can be applied at the same time and are mutually necessary to make the parties accountable and to achieve fruitful and positive relationships.

This article intends to examine the positive effects of an engagement between the LGBT CSOs and the NHRIs (CGE and the SAHRC) in order to tackle the phenomenon of corrective rape, and to analyse the reasons limiting such an engagement. This reflexion gives some tips to the LGBT CSOs which will allow them to take advantage of the powers and mandate of the CGE and the SAHRC, with a view to moving towards a solution to this problem. Moreover, it may help the LGBT CSOs to hold these two NHRIs accountable, pushing both institutions to apply themselves to the problems affecting LGBT people.

This article will begin explaining the phenomenon of corrective rapes and what are the reasons for pursuing an LGBT CSOs-NHRI engagement. Next, the article will give an account of how the LGBT CSOs have been handling this problem, both jointly and individually. Finally, section 3 will explore the actions taken by the CGE and the SAHRC to tackle corrective rape and the engagement between the LGBT CSOs and the CGE and the SAHRC on the issue, stressing the problems and proposing some solutions to overcome them.

Some of the findings reveal that both parties are willing to work together and that they consider this engagement important; however, mutual ignorance, false impressions about each other, and the lack of a single LGBT voice in key issues, among other reasons, have kept them apart.³

The phenomenon of corrective rape and the role of the engagement of the LGBT CSOs with NHRIs and non-LGBT CSOs

Placing the issue of corrective rape in the broader picture: gender based violence and homophobia

As mentioned earlier, corrective rape is the term used 'to describe the sexual violence perpetrated for the purpose of supposedly "curing" a person of their real or perceived sexual orientation and/or gender identity'.⁴ Many lesbians are frequently harassed, beaten up, raped, and in the worst cases assassinated, because of their sexual orientation. According to a recent report published by ActionAid in collaboration with other South African NGOs, '[t]here have been 31 recorded murders of lesbian women since 1998 – to date there has been just one conviction for these crimes'.⁵ This issue is a hate crime⁶ that combines the violence that many women⁷ suffer every day just because of their gender (gender-based violence), and the violence against LGBT people because of their sexual orientation (homophobic violence).

Gender, sexual orientation and race intersect in this phenomenon, making it a weapon of social control of the three-times 'other', the black-lesbian-women. The widespread violence against women and their historical marginalisation, the social discrimination on the grounds of sexual orientation, and the deprivation suffered by the majority of black people in South Africa formed the perfect milieu for this phenomenon to happen. According to Kate Wood,

raping girls and women is perceived as permissible when they do not fulfil the social ideal of femininity.⁸ So when a heterosexual man attacks a (black) homosexual woman, he is 'communicating to the social group of which the victim is a member that they are not wanted or tolerated within society or a specific community',⁹ he is teaching her how to behave like an African woman.¹⁰

There are certain patterns that allow us to roughly construct the profiles of hypothetical victims and perpetrators. Survivors are usually black lesbians living in deprived townships, but especially those women that break the gender roles showing a more (socially dominating) masculine behaviour, that is, 'butch lesbians' and those that dare to live openly as lesbians.¹¹ Perpetrators are usually young males¹² known by the victim, who have already harassed her on several occasions.¹³ According to some of the interviewees, the perpetrators seem to be predominantly black males.¹⁴

The term 'corrective rape' was generally disliked by the interviewees and explicitly challenged by the interviewed members of Triangle Project and People Opposing Women Abuse (POWA).¹⁵ In general, the preferred terms were gender-based violence and hate crime, which, according to the interviewees, allow them to place this phenomenon within the general problem of rape against women and the framework of hate crimes against 'others'. Making these connections would favour the forging of alliances with a broader social movement. However, the expression 'corrective rape' is accepted as a necessary evil.

Gender-based violence

Sexual violence is a widespread problem in South Africa, despite the favourable legal framework created in the 1996 Constitution. The country has the highest rate of rape in the world, according to one United Nations report,¹⁶ and it is estimated that one in two women will be raped during their lifetime.¹⁷ Rape is suffered mainly by girls and women, but affects boys and men as well. Besides, '[a]rrest and conviction rates of rape perpetrators are extremely low ... factors that contribute to the normalization of rape and violence against women and girls in South African society'.¹⁸

There is no single explanation for the country's rape epidemic, which is why in the literature and in the interviews conducted for this research three groups of factors are usually mentioned: first, socio-cultural (the patriarchy embedded in the culture, tradition and religion; the legacy of apartheid; the perception of the police service and the backlash created by the promotion and recognition of the rights of women and sexual minorities); secondly, economic; and thirdly, legal reasons (an unsympathetic police service and a dysfunctional criminal justice system).

Regarding the socio-cultural factors, culture, tradition and religion would act as the vehicle of transmission of sexist gender roles, 'maintaining the relations of male dominance and female subordination',¹⁹ and laying the burden of preventing any sexual attacks on women; in addition, when the aggression occurs, women are usually blamed for inciting the assault.²⁰ Another factor within this group is the legacy of apartheid and the colonial era, during which the control of the dangerous and threatening 'other'²¹ was exercised by applying extreme violence. Since the demise of apartheid, women have become the new 'other', and are subsequently policed and, when necessary, corrected through sexual violence.²² Lastly, it seems that the legal recognition and protection of the rights of women and sexual minorities²³ has triggered the violence against them, showing that the population does not endorse such equality.²⁴

Another group of possible factors explaining the country's rape epidemic would be economic difficulties, which subvert the traditional gender roles,²⁵ preventing men from

being the breadwinners. The loss of economic authority makes men more prone to use sexual violence as one of the few ways left to exert control over women.²⁶

Legal and administrative reasons would be the third group of hypothetical causes for the high rate of rape in the country. The suspicion of the population towards the police service, inherited from the apartheid era, remains unchanged in the new democracy. Before the arrival of democracy, the racist policies of the white-minority government made the police especially unwilling to investigate rapes of black women.²⁷ The population, however, still perceives the police as incompetent and untrustworthy, which, together with an unsympathetic response when approaching them, prevent women from reporting.²⁸ On the other side of the equation, completing the picture of the ineffectiveness of the democratic institutions responsible for the population's safety, is the dysfunctional criminal justice system. The country has a very low rate of conviction for rape, and cases are continually delayed; besides this, women face mistrust from judges and jurors, being socially blamed as responsible for the rape, as mentioned earlier.²⁹

Along with these reasons, the attitude of some members of the government towards the rape crisis and a certain fear of fuelling racist perceptions of black men as sexual predators have definitely downgraded the importance of this phenomenon. During the first half of the 2000s, President Mbeki dismissed the police's rape statistics as inaccurate³⁰ and, in 2006, Deputy President Zuma was charged with rape.³¹ The fact that the two most important figures of the Executive at that moment demonstrated such dubious behaviour clearly downgraded the seriousness of the issue. Mbeki's reluctance to acknowledge the problem was related to the fear of reviving the racist myth of black men being unable to restrain their sexual impulses,³² but, as a consequence of that, the opportunity to highlight the fact that black women are the main victims of rape³³ was missed. Thus the government has not articulated a coherent discourse around this problem, negatively affecting the state response and hiding the greater vulnerability of black women.

Homophobia

Gender-based violence, therefore, would be one side of the coin, homophobia being the other. The 1996 Constitution explicitly included sexual orientation within the principle of non-discrimination, right at the heart of the bill of rights;³⁴ this was the result of years of participation in the liberation movement by LGBT activists.³⁵ However, intolerance and prejudice against lesbians, gays, bisexuals and trans³⁶ remain a major problem in the country, with more than 80 per cent of the population considering same-sex relationships as always wrong.³⁷

As with gender-based violence, widespread homophobia in the country has many possible causes. Indeed, most of the factors that would explain violence against women are common to homophobia. The literature and interviews for this research thus mentioned repeatedly socio-cultural and legal and administrative factors as responsible for homophobia in the country.

At a socio-cultural level, in black culture, tradition and religion, homosexuality has been labelled on many occasions by black leaders as un-African, a disease brought in by white colonisers, especially since the decolonisation, thus perpetuating the prejudices against homosexuals.³⁸ But at the same time, the white minority rule, especially during the apartheid regime, considered homosexuality as a deviation and a threat for the Christian white tradition, whether practiced by women or men.³⁹ In this way the apartheid regime maintained inherited colonial rules⁴⁰ banning same-sex relationships and increasing the severity of its punishment, even to the extent of granting the police the power to arrest without a warrant anyone suspected of committing sodomy.⁴¹ Another reason for the

homophobia in the country is the raising visibility of LGBT people, which seems to have generated an increase in the number of hate crimes against them.⁴²

With respect to the legal and administrative reasons, the prejudice of many police officers toward LGBT people is one of the causes for the under-reporting of corrective rapes and other hate crimes against LGBT people. Survivors felt they would not be taken seriously and feared being humiliated by the officers.⁴³ Besides, the lack of hate crime legislation neglects the importance of the homophobia behind these attacks: once the case has reached the criminal justice system, the hate reasoning behind the crime is not taken into account, neither during the process, nor when reporting to the police, so downgrading the importance and gravity of the incident. As a consequence of this lack of specific legislation for hate crimes, corrective rapes and other hate crimes against LGBT people do not receive the necessary attention, making it very difficult to determine the exact number of cases.

As with gender-based violence, the homophobic attitudes of some state figures has reinforced intolerance against LGBT people. For example, in 2009, the attorney Omar, criticised the appointment of a lesbian judge to the Constitutional Court;⁴⁴ more recently, in 2010, President Zuma appointed as ambassador to Uganda a columnist known for his homophobic comments;⁴⁵ and in March of this year, the minister of arts and culture labelled as 'immoral' and 'against nation-building' an exhibition showing pictures of naked lesbian couples.⁴⁶ Moreover, Zuma himself made some homophobic comments during a public rally in 2006.⁴⁷ This contradictory behaviour has also been evident in international forums, where South Africa has frequently abstained or voted against initiatives supporting the advancement of the rights for LGBT people at the United Nations, aligning itself with Saudi Arabia, Sudan and China.⁴⁸ These attitudes from the government and other state officials reinforce the prejudices against LGBT people and contradict the role of the state as guardian of rights and equality.

The role of the engagement between the LGBT CSOs and the CGE and the SAHRC tackling the issue of corrective rape

The 1996 Constitution created two National Human Rights Institutions⁴⁹ (NHRIs): the CGE⁵⁰ and the SAHRC. The mandates of both these state institutions overlap on the issue of corrective rape, as the CGE is responsible for advancing gender equality whilst the SAHRC is mandated to secure respect for human rights.⁵¹

NHRIs are institutions normally created by the constitution or by statutory law and they are independent from the rest of the state institutions, especially from the legislative branch. The responsibilities of a NHRI may be summarised in two main areas: making governments, other state institutions and, sometimes the private sector, accountable regarding the fulfilment and protection of human rights; and promoting a culture of human rights.⁵² Some of the powers that are typically granted to NHRIs to fulfil their duties are: advising government regarding human rights on laws and public policies, making recommendations, researching human rights issues, engaging in human rights education, investigating human rights violations complaints made by any individual, and bringing cases to the courts. In addition to their jurisdiction over the public sector, NHRIs sometimes have authority over the private sector's behaviour, as mentioned before. In the case of South Africa, the NHRIs were created by the constitution; are independent from any other state institution, although they are monitored by the Parliament; have been granted all the powers mentioned here; and have jurisdiction over the public and the private sector.⁵³

NHRIs may in this way, as Linda C. Reif states:

First, ombudsman and hybrid human rights ombudsman offices can improve the legality and fairness of government administration, thereby increasing government accountability.

Second, all types of national human rights institutions can act as mechanisms for the domestic implementation of the international human rights obligations of the state and assist in strengthening human rights protection.⁵⁴

This situates the NHRIs in a privileged position between government and other state institutions on the one hand, and CSOs on the other, with the ability to collaborate, mediate and act as a link between both, forcing government to take on certain human rights issues, such as corrective rapes.⁵⁵

In this article, therefore, the engagement between the CSOs and NHRIs in South Africa is proposed as an alternative to the more direct one between government and CSOs to tackle the issue of corrective rape and other hate crimes against LGBT people. As seen, the reason is that NHRIs could exert greater pressure on government than the LGBT CSOs on their own.

In this document, the term engagement refers to 'a more complicated relationship in which both cooperation and conflict are means of engagement and it is possible for both to be employed at once'.⁵⁶ The CSOs need to work with the NHRIs from this double perspective; the reason is that sometimes, the NHRIs seem neither to have been fulfilling their mandates, nor tackling certain issues. In these cases cooperation should give way to confrontation, with the CSOs acting as the watchdogs of the NHRIs.⁵⁷

This double relationship between the CSOs and the NHRIs present some challenges: in the case of cooperation, if this collaboration is perceived by the public or the government as excessive, both the CSOs and the NHRIs might see their legitimacy reduced and their independence threatened;⁵⁸ with respect to confrontation, 'when NGOs criticize the NHRI's performance, the latter may view this not as a legitimate form of accountability (as it should), but rather as an attack on its independence, which may well jeopardize future relationships'.⁵⁹

There are different reasons to pursue this engagement between the LGBT CSOs and the NHRIs instead of engaging directly with the government to tackle the problem of corrective rape. The principal reasons are: first, the inaction of the government to tackle hate crimes against LGBT people and the rape epidemic; secondly, the distance between the LGBT organisations and the government, and thirdly, the weakness of the LGBT movement.

With regard to the first reason, as shown previously, the government has been unwilling to give real solutions to the problem of gender-based violence, and, on many occasions, its behaviour has been clearly homophobic, which indicates that corrective rape is undoubtedly not on its agenda. It would be unlikely therefore, that the government would meet the demands made by the LGBT CSOs on the issue of tackling the problem of corrective rape.

The relationship between the LGBT movement and the government is almost non-existent. The often homophobic stance of the government and its persistent refusal to tackle issues affecting LGBT people, have led to a complete breakdown of relationships. As a result, according to the interviewees, the relationships between government and the LGBT CSOs interviewed are practically nonexistent at the moment.⁶⁰

Finally, the last reason for recommending this engagement would be the weakness of the LGBT sector. The reasons are that the LGBT CSOs are going through a delicate process of future strategy evaluation; the role of a supra-organisational voice, such as the Joint Working Group (JWG) is still being defined; and the CSOs are facing future funding restrictions.

In this way, as the government is unwilling to tackle corrective rape and listen to the LGBT CSOs, the engagement between the LGBT CSOs and the CGE and the SAHRC would push the government to tackle the problem of corrective rapes and⁶¹ other hate crimes against LGBT people, benefitting the LGBT CSOs from the greater ethical authority of the CGE and SAHRC and their access to government.

There are different examples of successful NHRIs and CSO engagement on the African continent, including in South Africa. Regarding the collaboration as a form of engagement on gender-based violence, the Ghanaian Commission of Human Rights worked for several years in partnership with a local non-governmental organisation (NGO) to stop a form of sexual slavery of young girls called *Trokosi*, achieving excellent results.⁶² In South Africa, there are some remarkable examples of successful CGE-LGBT CSOs and SAHRC-LGBT CSOs collaboration. Regarding the CGE, there are two examples of positive collaboration with the LGBT sector: the first is the committee established by the CGE with the LGBT CSOs between 2003 and 2004.⁶³ The second example is found in the deep commitment of two members of the Western Cape office of the CGE with the 070707 Campaign (which will be further discussed in this article). With respect to the SAHRC, a successful example is the collaboration between the National Coalition for Gay and Lesbian Equality⁶⁴ (NCGLE) and the SAHRC in fighting the criminalisation of sexual relations between men, with the result that this provision was declared unconstitutional in 1998.⁶⁵ Concerning confrontation as a way of engagement, there are not many examples that resulted in a stronger relationship between the CSOs and the NHRIs; this, however is part of the role of the CSOs, which is supposed to hold the NHRIs accountable.⁶⁶ These critiques would, eventually, result in a more effective and efficient NHRIs.

The engagement between the CSOs and NHRIs may also be positive for the latter, not just for the CSOs. In the case of collaboration as a way of engagement, the literature mentions how the strong relationship with the civil society was the key in protecting the Danish Institute of Human Rights when a change in the Danish government's policies endangered the survival of the institution.⁶⁷ An example of confrontation as a form of collaboration may be found in the criticism from the feminist movement and public in general of the CGE,⁶⁸ which culminated with the suggestion of merging the SAHRC and CGE.⁶⁹ Despite the criticisms of many feminist organisations,⁷⁰ some of them spoke out against the idea, highlighting the importance of having an institution exclusively in charge of promoting gender equality.⁷¹ Moreover, organisations like POWA took advantage of the situation and pointed out the measures needed to make the CGE a functional institution, such as an increase in the budget and human resources.⁷² In this way, an engagement between the CSOs and NHRIs could also produce positive results for the NHRIs.

As a summary, there are three main ideas: first, corrective rape is the result of the combination of gender-based violence and hate crimes against LGBT people; secondly, it is a phenomenon that mainly affects black lesbians and is used to punish a behaviour which does not conform to traditional gender-based roles; and thirdly, the engagement between the principal NHRIs in the country (the CGE and SAHRC) and the LGBT CSOs, together with an alliance between LGBT and non-LGBT CSOs, may be the solution to force government to tackle the issue.

The response of the LGBT CSOs to corrective rape and the engagement amongst themselves⁷³

Corrective rape, as a gender-based violence issue, is theoretically included on the mandate of most women's CSOs and other organisations working on gender-based violence; most of the time, however, according to the interviewees, the reality is that these CSOs do little work on this issue, except for POWA.⁷⁴

This absence of substantial work on corrective rapes within the women's CSOs and other organisations working on gender-based violence leaves the LGBT CSOs as the main party responsible for pushing this issue onto the agenda. However, the LGBT CSOs are quite weak and small on their own that is why they should get together to tackle this problem and to forge alliances.

Most of the LGBT CSOs have not carried out any individual actions with regard to corrective rape and other hate crimes against black lesbians.⁷⁵ The majority of their efforts have been channelled through the 070707 Campaign (which will be explained later), where each organisation contributed to the different clusters depending on their expertise.

As stated earlier in this article, alliances with the NHRIs have proven to be very effective. All the interviewed members of the LGBT organisations recognised the importance of placing corrective rape and other issues affecting LGBT people within the broader picture of human rights and social inequality in the country.⁷⁶ In addition, all the interviewees at the LGBT CSOs considered alignment and collaboration with the CGE, the SAHRC, and non-LGBT CSOs very important.⁷⁷

To forge these alliances it is necessary that the LGBT CSOs act and speak as a single movement, allowing the NHRIs and other CSOs to count on them as reliable partners. Despite the diversity of priorities and ideologies, and the personal frictions, the LGBT CSOs must agree on a minimum common agenda to secure the backing of the broader civil society and NHRIs on urgent issues, such as corrective rape.⁷⁸

Engagement between the LGBT CSOs

The most successful engagement amongst the LGBT CSOs was the NCGLE (National Coalition of Gay and Lesbian Equality), formed in 1994.⁷⁹ According to Neville Hoad, it 'was a national umbrella organisation that was set up by a small group of lesbian and gay activists who saw the formation of the coalition as politically imperative and strategically necessary. At its peak the NCGLE claimed a membership of 78 affiliate organisations'.⁸⁰ This collaboration was very effective, working successfully within the broader liberation movement and with the SAHRC.⁸¹ However, it was criticised for being 'elitist, undemocratic, and unrepresentative of South Africa's gay and lesbian community'.⁸² Although finally disbanded in 1999, the collaboration was considered a very rich experience which correctly balanced cooperation and confrontation in such a way as to further the rights of LGBT people.⁸³

According to Natalie Oswin and Teresa Dirsuweit, the disbanding of the NCGLE was due to four main reasons: first, perception that the coalition was elitist and managed by white males; secondly, lack of support from the LGBT population; thirdly, failure to train new LGBT leaders at grassroots level (an unrealistic objective according to independent consultants hired by the NCGLE); and fourthly, lack of resources to assist all the LGBT CSOs that needed funding or support.⁸⁴

Joint working group

In 2002, three years after the NCGLE was disbanded, seven LGBT CSOs got together to form the JWG. According to their website, 'the Joint Working Group . . . is a national network of LGBTI-focused organisations in South Africa. The JWG represents the organised LGBTI . . . sector, and speaks and acts in the interest of our respective and diverse constituencies'.⁸⁵ Its mission statement expresses the desirability of forging alliances: 'we work with partners across the human rights spectrum and build alliances with those who share our vision, towards social justice, transformation and development of South African society'.⁸⁶ At the moment of doing this research, the JWG claimed to have 26 members.⁸⁷ With regard to their mandate, the objectives of the JWG since 2005 have been: to help sustain the LGBT CSOs, economically and in sharing tasks; to support new organisations to give a voice to a wider constituency; and to advocate and lobby for same-sex marriage.⁸⁸

The 070707 Campaign Act to End Hate is the most successful example of coherent and structured collaboration of the LGBT CSOs amongst themselves and with other allied

CSOs, in recent years.⁸⁹ This campaign ‘is a national network of over 25 South African organizations, led by the Joint Working Group . . . and aims to confront and address hate crime against lesbian, gay, bisexual, transgender and intersex people’.⁹⁰ However, the 070707 Campaign started to suffer the same problems as the JWG, due to a lack of clear direction; according to one of the interviewees, ‘it’s not appropriate for a network to try to drive a mass space [another coalition or campaign], in any way’.⁹¹

Issues limiting the engagement between the LGBT CSOs: problems within the JWG and the lack of historical memory

At the moment of writing this article, the JWG was in a deadlock because of its multiple problems: the coordinator had quit, the CSOs had stopped collaborating with the JWG, and none of the interviewees knew exactly what the future of the coalition would be.

There were different problems behind the standoff situation of the JWG, limiting the engagement between the LGBT CSOs, namely: lack of reflexion on previous experiences of engagement; issues concerning the clarity of the JWG mandate; territorial tensions and competing leadership; lack of support from the member CSOs towards the JWG; and the absence of ways to deal appropriately with confrontation.

From a historical perspective, some of the problems that had affected the NCGLE were reproduced in the JWG. The complete dissociation of the NCGLE from the JWG, and the fact that many member organisations of the JWG were formed at the beginning of the 90s, could be the explanation for this, since there was no direct link between the NCGLE and the JWG. However, some of the organisations that formed the JWG were part of the NCGLE, and moreover, most of the activists that created the new LGBT CSOs at the beginning of the 90s were part of the NCGLE as well. There was, therefore, a lack of organisational reflexion on what the problems that affected the NCGLE were, and how they should have been solved at the JWG.⁹²

Regarding the problems about the precision of its mandate, the different interviewees at the LGBT CSOs highlighted three issues: unfulfilled objectives, the JWG becoming another organisation, and ideological differences. One of the objectives of the coalition was to support new LGBT CSOs and expand the number of organisations, but according to one of the interviewees, this objective was not accomplished.⁹³ Another question regarding the mandate raised by two of the interviewees was the possible overlapping of activities between the individual member CSOs and the JWG;⁹⁴ in particular, one of the interviewees feared the JWG could become a new organisation, and so compete with their member CSOs.⁹⁵ Lastly, the imprecision of the JWG’s mandate fired up the ideological confrontation between those LGBT CSOs pushing the JWG to focus on programmatic work, such as research, in order to shape future interventions carried out by the different members, and those LGBT CSOs wanting to work more on advocacy and lobbying.⁹⁶ This question alienated at least one member organisation of the JWG, who consciously backed away from the network; the interviewed member at this CSO indicated that they felt the JWG had been too radical in certain instances.⁹⁷ As a consequence of the imprecision of the mandate therefore, some of the interviewees at the LGBT CSOs felt that the JWG had failed to fulfil their expectations, disappointing and alienating some of the member organisations and weakening the collective voice.⁹⁸

With respect to the territorial tensions and the competing leadership, there were some concerns about the legitimacy of the Johannesburg CSOs, including the JWG, speaking on behalf of the whole LGBT sector.⁹⁹ This centralisation created dissatisfaction in at least one organisation, which felt the need to counterbalance the power held by the Johannesburg-based LGBT CSOs.¹⁰⁰ This competition also impacted negatively on the capacity of the LGBT CSOs to speak with a single voice.

Another problem mentioned was the lack of support for the JWG from the member organisations. Two of the interviewees complained that the CSOs did not fulfil their assigned tasks, so hampering the work of the JWG.¹⁰¹ One of the interviewees, for example, affirmed that the JWG was basically one person.¹⁰² The lack of capacity of the JWG and the insufficient collaboration of the organisation members therefore reduced its impact and public presence.

Lastly, JWG members were not very keen to openly discuss their differences when they appeared; this allowed the situation to deteriorate and made it more difficult to find solutions. As one of the interviewees stated ‘[there are] things that we can resolve through talks, or discuss, in an open space, and at the same time, being open minded rather than putting things under the cupboard’.¹⁰³

In summary, the LGBT CSOs were unable to lead the confrontational side of their engagement to the enrichment and development of the JWG, so instead of trying to solve the problems, they slowly backed down, depriving the LGBT sector of the strong, single voice required to push corrective rape and other issues onto the public agenda.

Possible solutions

All the interviewees recognised the need of having some kind of supra-organisational structure to coordinate certain actions. But to keep such a coalition alive, it would be necessary to reflect on the problems occurring at the NCGLE and the JWG, and to learn how to use confrontation in organisation-building, in order to help develop the coordinating body.

The first step to bring life to the JWG would be the redefinition of its mandate, adapting its objectives, functions and powers to the current situation; this need was openly suggested by three of the interviewees.¹⁰⁴ The new mandate should in the first place, tackle only those issues which all the CSOs feel are important and on which they have a common stance; secondly, it should set concrete, attainable objectives, avoiding rhetorical, idealistic commitments; thirdly, it should delimit explicitly the areas where the coalition as an entity must not work, in order to avoid possible overlapping with the activities of the individual members; and fourthly, it should establish formal mechanisms which would allow member organisations to raise concerns for discussion and resolution either at the steering committee or at the assembly.

Setting concrete objectives may also be risky; as Mark Ungar says, ‘alliances that center around more concrete goals . . . are generally stronger but have troubles surviving after realizing the goal’.¹⁰⁵ One solution to this problem of broad versus narrow objectives would be to set broader organisational objectives, with consecutive four-year action plans with concrete, measurable objectives and indicators.

With regard to the territorial tensions between Gauteng and the other provinces, one alternative would be the establishment of provincial branches of the JWG. The NCGLE used such a structure with an ‘Executive Committee drawn from all provinces within South Africa where there were active lesbian and gay structures’.¹⁰⁶ Regionalising the JWG was one of the options raised by one of the interviewees, the other one being the elimination of the external coordinating body in favour of one organisation taking on the secretariat of the JWG.¹⁰⁷ None of the interviewees mentioned the possibility of advancing towards a stronger coordinating body, such as a federation. Of the two raised options, regionalising the JWG would seem the more reasonable one, as it would prevent one member of the JWG bearing all the responsibilities of the coalition.

The risks of regionalising the JWG would be the atrophy of the coalition, due to excessive bureaucratisation and a fragmentation of the single voice of the JWG. With regard to the first, the provincial branches should have enough independence to take decisions without needing to consult all the time with the national committee. Concerning the

second, the establishment of tight, concrete objectives would eliminate this risk, securing a single stance on key matters.

The last issue limiting the engagement and effectiveness of the JWG was the lack of support of the coordinator by CSO members. One possible solution would be the introduction of membership fees. This measure would allow the hiring of a second person to work at the JWG, increasing the visibility and action of the coalition, and would reduce the pressure on the coordinator. Moreover, imposing this financial commitment on the member organisations would encourage their real involvement, since they would demand clear results in return for their economic contribution.

The proposed solutions would therefore be: greater organisational reflexion on previous attempts at coordinating the LGBT CSOs; a new mandate with concrete, attainable objectives; the regionalisation of the JWG, reinforcing its structure with provincial branches; and the imposition of a membership fee. This may transform the JWG on an effective coordinating body which will allow the LGBT CSOs to talk with a single voice on corrective rape and other important issues. The LGBT CSOs, therefore, would be able to forge alliances with the NHRIs to push the government to tackle this problem.

The response of the CGE and the SAHRC to corrective rape and the engagement with the LGBT CSOs

***The mandates of the CGE and the SAHRC with respect to corrective rapes*¹⁰⁸**

The 1996 Constitution created different state bodies in order to 'strengthen constitutional democracy',¹⁰⁹ two of these being the CGE and the SAHRC.¹¹⁰ The CGE was shaped in order to advance the gender equality in the country,¹¹¹ whereas the SAHRC was mandated to promote, protect and monitor human rights.¹¹² The legislation gives them the following powers to fulfil their duties: to monitor and evaluate the practice of state and private actors; to review legislation and make recommendations to the Parliament; to carry out education programmes; to investigate any complaint made to them; to research any important issue regarding their mandate; to bring cases before the competent courts; and to liaise with other Chapter 9 institutions and CSOs in order to advance their mandate.¹¹³

The CGE and SAHRC mandates overlap on the issue of corrective rape, since it is a crime where gender and sexual orientation intersect. This being a gender-based violence issue, the CGE is competent; being equally a homophobia issue, the SAHRC would also be in charge. Hence, both state bodies are responsible, according to their mandate, to take the necessary measures to tackle this problem within their powers and functions.

This overlap has provoked a gap where staff members and commissioners of both agencies seem not to feel wholly responsible for tackling this problem. Neither the CGE nor the SAHRC have taken any measures aimed at tackling corrective rape, and it seems unlikely to be on the agenda in the near future.¹¹⁴ Moreover, the overlap has created confusion amongst the LGBT CSOs, which do not seem to have a clear strategy of what to demand of either of them.

The individual work of the CGE and the SAHRC on corrective rape and other LGBT issues

The CGE has done very little individual work on corrective rape, and their activities concerning homophobia in general have been very limited. It has not, for example, conducted any research on corrective rape or homophobia,¹¹⁵ and in addition, its reports and documents usually do not even mention sexual orientation. Concerning its educational programmes, the CGE does not deliver special workshops on sexual orientation, and it was

not clear to what extent sexual orientation was raised during sessions on other topics. However, the Western Cape office of the CGE has participated in some radio talk shows on a local station where sexual orientation was discussed.¹¹⁶ Finally, in terms of speaking out, the CGE issued a press release in 2009 celebrating the conviction of the perpetrators of the rape and assassination of Eudy Simelane (a black lesbian football player raped and killed for her sexual orientation),¹¹⁷ and one of the commissioners has denounced on various occasions the violence against LGBT people and black lesbians in particular, however, its impact in the mass media was imperceptible.¹¹⁸ In addition, some interviewees have acknowledged that there is a certain concern among the LGBT CSOs about whether the voice of this particular commissioner really represents the stance of the CGE on these issues.¹¹⁹ In general terms, the Western Cape office of the CGE has done some individual work on corrective rape and LGBT issues, whereas the individual work at the headquarters in Johannesburg is nonexistent or, at least, unknown.¹²⁰ The individual work of the CGE on corrective rape or homophobia has therefore been really limited, it having neither researched the issue nor raised public awareness about it.

The SAHRC has also done little individual work on corrective rape or homophobia in general, particularly in recent years, although its former chairperson publicly acknowledged the gravity of corrective rape. Like the CGE, the SAHRC has not conducted any research on corrective rape or homophobia,¹²¹ although one report of the Commission on school-based violence did mention the problem of corrective rape.¹²² With regard to the educational programmes, the workshops that the SAHRC delivered focused mainly on racism, although one of the interviewees at this institution affirmed that the issue of sexual orientation appears during the sessions, as all the aspects of discrimination are interconnected;¹²³ however, it was not clear to what extent this actually happened. With respect to speaking out about corrective rape, it was remarkable that, in an interview with the UK's Channel 4, Jody Kollapen, the former chairperson of the SAHRC, acknowledged the gravity of this issue and the need to take measures to tackle it.¹²⁴ The most recent SAHRC intervention regarding LGBT issues was related to the suing of John Qwelane for a homophobic newspaper article.¹²⁵ The SAHRC's individual work on corrective rape, therefore, has been limited as well, it not having carried out any research. However, it has been more vocal on LGBT issues than the CGE, as it showed when its former chairperson publicly recognised this problem in a TV interview, raising awareness amongst the population and calling for measures to be taken.

Engagement between the LGBT CSOs, the CGE and the SAHRC

Situation of this engagement in recent years

In general terms, the collaboration as a form of engagement between the LGBT CSOs interviewed and the CGE has been minimal and sporadic (except for Triangle Project), and neither the LGBT CSOs nor the CGE have approached the other party with well-articulated, concrete proposals. According to the different interviewees in the LGBT CSOs: FEW have not had any contact with the CGE. Out made a few submissions to the CGE and they were invited to a gender-based violence conference around 2008, but apart from that, the contact between both organisations had seemed to have been sporadic. The engagement between the Durban Lesbian & Gay Community & Health and the CGE also appeared to be restricted, although one human rights activist from another organisation affirmed that they had been 'actively working with a legal officer from the KZN¹²⁶ CGE on one case of alleged hate crime'. The Equality Project had had a little more work with the CGE, having involved NHRI in the Eudy Simelane case;¹²⁷ moreover, they had received one case from the CGE, although the contact was once again quite limited and only intermittent.

The only LGBT CSO that had a more sustained relationship with the CGE was Triangle Project, with an extensive collaboration around the 070707 Campaign and other individual activities; however this greater engagement between both organisations was the result of an individual, isolated relationship with two specific members of the CGE at the Western Cape office. The collaboration and communication between the LGBT CSOs and the CGE had been therefore sporadic and reduced to occasional issues, there not existing any kind of strategy, except for Triangle Project and the Western Cape CGE office, where there had been an active relationship, but only as a consequence of individual relationships.¹²⁸

As far as the collaboration as a form of engagement between the LGBT CSOs and the SAHRC is concerned, this had been slightly more substantial and sustained, probably as a result of more extensive earlier cooperation from the end of apartheid until the middle of the 2000s,¹²⁹ and the perception that the SAHRC had been more effective than the CGE.¹³⁰ In the case of the SAHRC, it seems to have been more pro-active and has taken the initiative to contact the LGBT CSOs on several occasions in recent years. Nonetheless, the collaboration and communication remained isolated and unstructured, and neither the LGBT CSOs nor the SAHRC had approached the other side with concrete, structured proposals. Therefore, according to the LGBT CSO interviewees, neither the Triangle Project nor FEW had had any contact with the SAHRC and, neither apparently, had the Durban Lesbian and Gay Centre. The Equality Project seemed to have a little more contact with the SAHRC, and in fact, the interviewees from this organisation stated that the SAHRC had recently contacted them in regard to the behaviour of the South African government on LGBT issues at the UN. Out did not have much work with the SAHRC either,¹³¹ although it appeared that this NHRI had tended to count on them when needed; a recent example would be the visit of the Ugandan Human Rights Commission to the SAHRC, during which this state institution called Out and GALA¹³² for a meeting with the Ugandan Human Rights Commission.¹³³ In this way, although the engagement between the LGBT CSOs and the SAHRC has been more extensive than that with the CGE, it has remained occasional, isolated, and lacking in strategy.

The participation of the CGE and the SAHRC in the 070707 Campaign

The engagement of the 070707 Campaign with the CGE and the SAHRC was again very limited, despite it being a platform where these two NHRIs could have had an important role raising awareness in the population and upgrading the campaign in such a way that the government would have had to take note. According to one of the interviewees, the main reason why the 070707 Campaign had not engaged with the CGE and SAHRC more actively was the lack of reflexion within the JWG on what to ask them.¹³⁴

Of the two NHRIs, only the CGE collaborated actively on the Campaign, and even then, only the Western Cape office. There, the CGE got involved from the beginning after being approached by different organisations, working mainly in the legal cluster of the campaign.¹³⁵ Meanwhile, the headquarters of the CGE in Johannesburg did not get involved, despite some efforts, according to one of the interviewees.¹³⁶ The reason why the Western Cape office had been collaborating on the Campaign was that Triangle Project had had good relationships with two members of the CGE in the Western Cape, as previously mentioned. These members had been very sensitive about the issues affecting LGBT people.

With respect to the engagement with the SAHRC, none of the interviewees on the LGBT CSOs mentioned having tried to involve this NHRI. The lack of agreement and reflexion within the organisations forming the 070707 Campaign on the need to incorporate the CGE and the SAHRC therefore prevented any important engagement with them.

Issues limiting the engagement between the LGBT CSOs and the NHRIs

There are several factors that have limited the engagement, including lack of contact between the two sides, mutual ignorance of their organisation and mandates, lack of leadership amongst the LGBT CSOs, limited resources and capacity, overlapping mandates for the CGE and the SAHRC and finally, the absence of clear strategic programmes for both NHRIs.

In general terms, according to the interviewed members of the LGBT organisations on one side, and the CGE and the SAHRC on the other, both parties had maintained only sporadic contact based on single current issues, and this work had tended to depend on previously established relationships.¹³⁷ Neither the CGE, nor the SAHRC, nor the LGBT CSOs had actively pursued a more continuous organisational relationship in order to strategically advance respect for the recognised rights of LGBT people and tackle the problem of corrective rape. One of the interviewees from the LGBT CSOs admitted that they had been working on an individual basis, taking advantage of those members within the CGE and the SAHRC who were sensitive to LGBT issues, instead of pursuing a more institutional relationship. As a result, once these workers leave their post, contact is lost.¹³⁸ Triangle Project had been the only organisation that had truly engaged with the CGE in the Western Cape, but this work was based, as mentioned earlier, on an individual relationship between the LGBT CSO and two members of the CGE in this province. This lack of contact has therefore prevented the LGBT CSOs from counting on two potentially powerful allies in order to push the government and other state institutions to tackle the problem of corrective rape and homophobia in general.

As each of these organisations (LGBT CSOs, CGE and SAHRC) had only a very limited understanding of how the others work, false impressions were easily created. Some of the interviewed members at both the CGE and the SAHRC had an over-idealised picture of the LGBT CSOs, depicting them as a very vibrant, self-sufficient and powerful sector that does not need support from any of these two NHRIs.¹³⁹ This had allowed them to excuse themselves for not having considered working on the issue of corrective rape or homophobia in general.

On the LGBT CSO side, their lack of knowledge of the mandate, powers and functioning of the CGE and the SAHRC partly explained their limited engagement with these two NHRIs. This is why some of the interviewed members of the SAHRC complained about people's ignorance of the limitations and functioning of the institution, which, in their opinion, had created unrealistic expectations inevitably leading to disappointment.¹⁴⁰ In addition, one of the interviewees at this NHRI affirmed that the LGBT CSOs had not brought any case of corrective rape to them.¹⁴¹

This ignorance is partly caused by the generally negative perception of these institutions on the part of the LGBT CSOs and allied organisations: both NHRIs were portrayed as bureaucratic, inaccessible, unresponsive, dysfunctional, and reluctant to tackle LGBT issues, especially the CGE.¹⁴² This perception came from previous LGBT CSO experiences of these two state bodies, possibly reinforced by the general public's feeling about both NHRIs.¹⁴³

As one of the interviewees affirmed, the LGBT CSOs had not been vigilant about whether the CGE and the SAHRC were fulfilling their mandate regarding LGBT issues,¹⁴⁴ and in addition, they have not thought about engaging with these two public bodies to tackle the issue of corrective rape or homophobia in general. The ignorance on all sides of their respective functioning has prevented the LGBT CSOs from taking advantage of the powers of the CGE and the SAHRC to tackle the problem of corrective rape or other homophobia-related issues.

Another problem that has negatively affected the engagement between the LGBT CSOs, the CGE and the SAHRC has been the lack of leadership and coherence within the LGBT CSOs, which have seemed unable to speak with a single voice on certain key issues.¹⁴⁵ The JWG failed to do so as a result of (as mentioned before): an unclear mandate, internal differences on strategy and functions, and lack of leadership has prevented the JWG from speaking as the single LGBT voice on key issues such as violence against black lesbians.¹⁴⁶ As a consequence, the CGE and the SAHRC had been working with a limited number of LGBT CSOs based on personal relationships and preferences,¹⁴⁷ which to a certain extent has acted as a barrier to greater representation and has discouraged both institutions from counting on the JWG or other LGBT CSOs. The results of this lack of a single voice amongst the LGBT CSOs have been: first, that there has not been a clear, structured LGBT stance on what to demand from the CGE and the SAHRC and how to hold these two NHRIs accountable,¹⁴⁸ and secondly, these two NHRIs have not found a fully legitimate interlocutor on LGBT issues.

Funding, capacity and work overload were also adduced by the interviewed members of the LGBT CSOs, the CGE and the SAHRC as some of the reasons limiting the engagement. As a result, the LGBT CSOs have prioritised the most immediate work, renouncing reflection on long-term strategies towards the CGE and the SAHRC; and the CGE and the SAHRC have abandoned the issues of corrective rape in particular, and homophobia in general, as *de facto*, secondary matters.¹⁴⁹

Some issues limiting the engagement between the LGBT CSOs and the CGE and the SAHRC were related to organisational matters within these two NHRIs. One of these problems was the overlap in the CGE and SAHRC mandates with regard to the problem of corrective rape, as previously discussed in this article. As a result of this overlap, neither of these two public bodies especially the SAHRC, have seemed to feel fully responsible for tackling this issue, and the LGBT CSOs have not known which of them to approach.¹⁵⁰

Another organisational problem hampering this engagement has been the lack of clear strategic programmes for these two NHRIs. In the case of the CGE, its strategic plan has been to set the objectives to achieve during the next few years and the indicators to monitor the degree of compliance; these objectives, however, are excessively broad and the indicators too vague to monitor.¹⁵¹ Concerning the SAHRC, its strategic plan does not even have established objectives, being a mere succession of figures; and moreover, it seems to be two overlapping plans, one lasting from 2007 until 2010 and another from 2008 to 2010.¹⁵² In informal discussions with members of the CGE and the SAHRC, they argued that the commissioners bring their own agenda, and that they, as staff members, must follow their instructions. As a consequence of lack of clarity in their strategic plans, the LGBT CSOs have not been able to act as watchdogs.¹⁵³

Possible solutions

There are no magic solutions for creating a true engagement with the LGBT CSOs on one side, and the CGE and SAHRC on the other; this will be a tough task that will need commitment, trust and hard work from both sides. However, there are certain prior conditions to be fulfilled in order to facilitate this engagement.

One of the first steps that should be taken is the creation of a formalised and stable forum between the LGBT CSOs and each of these two NHRIs, where both sides could agree on a common agenda and set up a strategy to tackle corrective rape and other problems affecting LGBT people.¹⁵⁴ All the interviewees at the CGE, the SAHRC and the LGBT CSOs highlighted the importance of engaging one another and their willingness to do so; however, there has so far not been any space where this engagement could take shape. Both the CGE and the SAHRC Acts include the possibility of both NHRIs creating

committees with external people and organisations, which would be composed of one or more members of the CGE or the SAHRC and one or more people from outside.¹⁵⁵ Within these committees, both NHRIs could delegate any powers that they hold in order to achieve their objectives. These committees are the only option for a formalised engagement between these NHRIs and the CSOs and they have been successfully used before, when the CGE formed a committee with the LGBT CSOs, in 2003–2004.¹⁵⁶

The structure of the LGBT CSOs-CGE and the LGBT CSOs-SAHRC committees may be problematic due firstly to the territorial tensions amongst the LGBT CSOs,¹⁵⁷ secondly to the complicated provincial structure of both NHRIs, and thirdly to the different situations in the provinces. The territorial tensions between the LGBT CSOs based in Gauteng¹⁵⁸ and the LGBT CSOs from the rest of the provinces would make the creation of a single national committee based in Johannesburg difficult; this would complicate the participation of LGBT CSOs not based in Gauteng, due to distance and economic constraints. As a consequence, such a committee might be accused of lacking legitimacy. The organisational structure of the CGE and the SAHRC in the provincial offices would also complicate any attempt to set up a single committee. In addition, every province has its own particularities; the priorities in a province such as the Eastern Cape, for example, would be different to those in a province such as Gauteng.

The most suitable option, therefore, would be the creation of provincial committees, which would appoint two delegates (for example) to the national committee, one from the LGBT CSOs and the other from the NHRIs. Lastly, the delegates from every province would meet periodically at a national level to discuss the issues that needed a more national response; these national committees, however, should meet less frequently than those at a provincial level, to avoid consultation fatigue. Thus, the most suitable structure for this engagement would be the creation of provincial committees, which would elect delegates who would meet periodically at the national committee.

Once having set up the forums for this engagement to happen, it would be necessary to agree on an action plan identifying work priorities, objectives and indicators. To obtain successful engagement, both sides would need to reflect internally on the desired outcomes of these relationships, especially the LGBT CSOs. Without a document establishing concrete objectives, with the activities and the indicators used to assess them, this engagement would fail, resulting in a waste of resources and energy.

There are different options for drawing up this action plan; one would be through a national meeting with all members of all the provincial committees. This national gathering would agree on a concrete action plan, which would include those activities to be carried out at a national level, and would set the framework for more specific provincial action plans. After that, the provincial committees would draw up their own action plan according to the specific needs of each province. These provincial action plans would comply with the national one. These national and provincial agreements would help to monitor the implementation and success of this engagement. In any case, these plans should be concrete and measurable.

It is important that the agreed objectives be realistic; signing an agreement with unattainable objectives would be as bad as not having an action plan at all, and it would transform these committees into yet more pointless and moribund forums. To avoid this risk, both the LGBT CSOs and the NHRIs should be transparent from the beginning, respecting the other side's expectations and admitting their own limitations. This would mean informing the other parties how their organisation worked and what their powers, function and duties were, thus dispelling the ignorance that has characterised their relationships in the past. The LGBT CSOs, the CGE and SAHRC, should, therefore, draw up a realistic action plan, which would help to monitor the success of these engagements.

In the case of the problem of corrective rapes, it would be necessary to form a three-way committee between the CGE, the SAHRC and the LGBT CSOs, because of the dual nature of this issue (gender-based violence and homophobia). This could be in the way of a new committee formed of representatives of both the CGE and SAHRC national committees. This solution would avoid the bureaucratisation of this three-way committee, safeguarding its ability to take decisions and avoid overlap and contradictions with the other two single national committees. Clearly, this three-way space would not be able to go too far in terms of providing solutions for the problem of corrective rape, because of the complexity of this issue and its connection with the general problem of gender-based violence in the country and other related/intersecting issues. However, there are many concrete actions and interventions that could be taken to tackle this problem, for example: researching this issue and publishing a report; launching an educational campaign directed at the Police Service and the Judiciary; the creation of educational activities (in schools, for example); and holding the government responsible for its homophobic attitudes within the country and on international forums. These objectives should be agreed in an action plan, in the same way as the single committees LGBT CSOs-NHRIs. In addition, the CGE and the SAHRC should agree on how to share the costs of these activities; one solution would be to apply for funding to organisations such as the European Union, which has previously supported the CGE.

Together with the formalisation of the engagement between the LGBT CSOs, and the CGE and the SAHRC, the LGBT CSOs should overcome their differences and push for a common agenda towards these two NHRIs, as suggested in Section 2. Moreover, if possible, it may be advisable to reach a compromise to leave certain issues off the agenda to try to give it maximum legitimacy. The reason for this is that some LGBT CSOs may consider the intended programme too radical, preventing them from getting involved,¹⁵⁹ and thus undermining the legitimacy of the committees.

One of the risks of using such a complex structure of committees is that they could become too bureaucratic and, consequently slow and ineffective. However, this structure is being used successfully in Argentina where the Inadi (National Institute Against Discrimination) and the LGBT CSOs work together through formalised forums (*foros de la sociedad civil*), which monitor the implementation of the National Plan Against Discrimination; one of these forums is exclusively for LGBT issues. There is one committee in every province and a national committee in the capital. There is still, however, no clear relationship at the moment between the national and the provincial committees, which in reality work as different systems.¹⁶⁰

The evolution of a formalised form of collaboration through committees (or alternative versions of them) would be vital to keep the engagement alive. The development of these forums of collaboration may be pursued once the most immediate objectives had been met; in this case the remaining issues to be tackled would probably be long term objectives, such as the reduction of homophobia in its diverse manifestations. However, this form of engagement should not be abandoned, in order to allow the LGBT CSOs to monitor the actions carried by these two NHRIs.

A formalised forum of engagement, an action plan drawn up by the committees, and a minimum common agenda agreed by the LGBT CSOs, would make it possible to carry out the confrontational aspect of the engagement. As explained in Section 1, collaboration and confrontation are the two components of engagement. Once the LGBT CSOs have communicated their expectations, stated their priorities and agreed with the two NHRIs on a common set of objectives, the LGBT CSOs may be able to hold the CGE and the SAHRC accountable. In the case of non-fulfilment of the action plans, the LGBT CSOs could legitimately demand that these two NHRIs implement the agreement, failing which public denunciation of their unwillingness and/or inefficiency would follow, with steps taken to ensure compliance where necessary.

Conclusion

This article has analysed whether or not the engagement between the LGBT CSOs and the NHRIs would be an effective alternative to tackle the problem of corrective rapes, due to the unworkable relationship between the LGBT CSOs and the government. The findings indicate first, that there is indeed a role for this engagement; secondly, that this engagement would help to tackle the problem of corrective rape and other hate crimes against LGBT people; thirdly, that it would be the best alternative to an unfeasible engagement with the government; fourthly, that the engagement LGBT CSOs-NHRIs would force the government to act on the issue; and finally, with this engagement, the LGBT CSOs would place corrective rape and other issues affecting LGBT onto the human rights agenda of the two main NHRIs of the country.

Corrective rape is a multilayered issue found in the confluence of race, gender and sexual orientation. It is the result of the combination of gender-based violence and homophobia, and it is used to punish a behaviour and a lifestyle which do not conform to the traditional gender roles. It mainly affects black lesbians and is just one of the diverse hate crimes against them. The bigger picture of this problem, therefore, is the general rape epidemic that affects South Africa and the intolerance towards LGBT people that still exists amongst the vast majority of the population.

The present situation of the LGBT CSOs makes it very difficult for them to introduce this problem onto the government's agenda. The main reasons are, first, that the LGBT CSOs represent a very diverse minority, which makes it very difficult to mobilise them; secondly, their relationships with the government are almost nonexistent due to its homophobic behaviours and inaction to tackle the rape epidemic in the country; thirdly, the different LGBT CSOs are going through a process of re-thinking their strategies; and fourthly, they may soon see their funding reduced.

The privileged position of the country's two main NHRIs, the CGE and the SAHRC, which occupy a place between government and the civil society, would help to tackle this problem and would push the government to deal with the problem. Instead of engaging directly with the government, therefore, it would be more positive and feasible for the LGBT CSOs to engage with these two NHRIs, in order to tackle corrective rape and to get the issue onto the government's and other state institutions' agendas.

The engagement between the LGBT CSOs and the NHRIs would have two aspects, cooperation and confrontation, it being possible to apply both at the same time. The LGBT CSOs would therefore collaborate with the CGE and the SAHRC to advance towards the realisation of their mandates, leading them to address the issue of corrective rape. At the same time, however, the LGBT CSOs would act as watchdogs over the CGE and the SAHRC, resorting to confrontation where necessary, in case that these two NHRIs did not fulfil their commitments made with the LGBT CSOs.

This engagement would also benefit the CGE and the SAHRC. These two NHRIs have been under pressure in recent years, due to the publication in 2007 of a critical report about their performance,¹⁶¹ which also contained allegations of their lack of independence from the government. The CGE, which has also had financial and organisational mismanagement problems, was the more affected of the two NHRIs. The CGE and the SAHRC would, therefore, get from this engagement, first, an improvement in their public image, gaining legitimacy with the human rights CSOs; secondly, in including the LGBT CSOs as allies, they would be able to rely on a broader range of CSOs in case of being attacked by the government, political parties or other state institutions; and thirdly, they would realise a part of their mandate protecting LGBT people, issues that, so far, have not been very relevant for these two NHRIs.

To achieve this engagement, two things are necessary: first, a single LGBT voice on corrective rape and other key issues; and secondly, a formalised forum between the LGBT CSOs and the CGE and the SAHRC. Regarding having a single voice on important matters, it is essential for the LGBT CSOs to have a supra-organisational umbrella which would ensure a unified stance on these problems. This will require solving the problems that have affected the two main coalitions of LGBT CSOs (the NCGLE and the JWG) since the end of apartheid. Some of the proposed remedies would be: the organisational reflexion on the problems that these two coalitions had, the setting of concrete objectives, the regionalisation of the JWG and the introduction of a membership fee.

The second thing needed to realise this engagement is the creation of formalised forums between the LGBT CSOs and the CGE and the SAHRC. On these committees, both parties would be able to sit together to overcome their previous mutual ignorance and to agree on plans of action to tackle corrective rape and other problems affecting LGBT people. In addition, these formalised forums would help the LGBT CSOs to fulfil their role as watchdogs over these two NHRIs.

The findings of this article may help the LGBT CSOs to rethink their strategy concerning the CGE and the SAHRC. Until now, the LGBT CSOs have not seen any benefit from working with these two NHRIs; however this engagement would help to tackle the issue of corrective rape. In addition, it would situate LGBT issues right at the heart of one of the two most important institutions responsible for protecting the Bill of Rights.

Further, the findings may help the LGBT CSOs to re-consider the role of a supra-organisational LGBT coalition. In reinforcing such a structure, they would consolidate their position within the spectrum of human rights CSOs, providing other CSOs with a strong and reliable ally in key issues. Further, a stronger common stance on problems such as gender-based violence would definitely help to put the problems faced by lesbians high on the agenda of other non-LGBT CSOs.

Acronyms

CGE: Commission for Gender Equality

CSO: Civil Society Organisation

Durban Lesbian and Gay Centre: Durban Lesbian & Gay Community & Health Centre
Equality Project: Lesbian and Gay Equality Project

FEW: Forum for the Empowerment of Women

HSRC: Human Science Research Council

JWG: Joint Working Group

LGBT: lesbians, gays, bisexuals and trans.

LGEP: Lesbian and Gay Equality Project

NCGLE: National Coalition for Gay and Lesbian Equality

NHRI: National Human Rights Institution

POWA: People Opposing Women Abuse

SAHRC: South African Human Rights Commission

Notes

1. Wendy Isaack, 'South Africa: Hate Crimes and State Accountability', *Africa Files*, <http://www.africafiles.org/article.asp?id=15869> (accessed 19 March 2010).
2. According to Adam Habib and Hermien Kotzé, CSOs 'refer to the broad range of associations and groupings that that fall under the term civil society'. See Adam Habib and Hermien Kotzé, 'Civil Society, Governance and Development in an Era of Globalisation: The South African Case', in *Governance in the New South Africa: The Challenges of Globalisation*, ed. Guy

Mhone and Omano Edigheji (Cape Town, South Africa: University of Cape Town Press, 2003), 268.

3. The methodology employed for this research was semi-structured interviews. This approach was used because of the lack of any research dealing with the relationships between LGBT CSOs and NHRI, in South Africa and elsewhere. For the purpose of this research, 15 people were interviewed in three different cities: Cape Town, Johannesburg and Tshwane/Pretoria. These people were members of the following organisations: CGE, Durban Lesbian and Gay Community Health Centre, FEW (Forum for the Empowerment of Women), HSRC (Human Science Research Council), Lesbian and Gay Equality Project, SAHRC, Out (Out LGBT Well-Being), Rape Crisis Cape Town, Sonke Gender Justice Network, and Triangle Project. The interviewees and organisations were chosen because of their work on LGBT issues and/or gender-based violence. In order to preserve the anonymity of the interviewees they have been assigned numbers, avoiding any personal reference, including gender. For this research, because of the sensitivity of the questions, most of them related to intra and inter-organisational relationships, an iterative consent process was used.
4. Isaack, 'South Africa: Hate Crimes and State Accountability'.
5. Action Aid, 'Hate Crimes: The Rise of "Corrective" Rape in South Africa', http://www.actionaid.org/micrositeAssets/southafrica/assets/correctiveraperep_final.pdf (accessed 19 March 2010).
6. According to the Merriam-Webster dictionary, hate crimes are 'any of various crimes (such as assault or defacement of property) when motivated by hostility to the victim as a member of a group (as one based on color, creed, gender, or sexual orientation)', <http://www.merriam-webster.com/dictionary/hate+crime> (accessed 6 September 2010).
7. When using the term women, I usually refer to biological women and transsexual women, so using this term from a feminist point of view, that is, women as a gender construction not completely fixed by biological features. However, there is no account of lesbian trans women being attacked because of their sexual orientation; this is probably because trans women would usually be attacked because of their gender identity. Therefore, in this case, when talking about women I will mainly refer to biological women.
8. Kate Wood, Helen Lambert and Rachel Jewkes, 'Showing Roughness in a Beautiful Way: Talk about Love, Coercion, and Rape in South African Youth Sexual Culture', *Medical Anthropology Quarterly* 21, no. 3 (2007): 295.
9. Isaack, 'South Africa: Hate Crimes and State Accountability'; Bronwyn Harris, 'Arranging Prejudice: Exploring Hate Crime in Post-Apartheid South Africa', Centre for the Study of Violence and Reconciliation, <http://www.csvr.org.za/wits/papers/paprctp1.htm> (accessed 20 August 2010).
10. Yolanda Mufweba, 'Corrective Rape Makes You an African Woman', *IOL*, 7 November 2003, http://www.iol.co.za/index.php?click_id=139&art_id=ct20031107212728265P430805&set_id=1 (accessed 19 March 2010).
11. Juan Nel and Melanie Judge, 'Exploring Homophobic Victimisation in Gauteng, South Africa: Issues, Impacts and Responses', *Acta Criminologica* 21, no. 3 (2008): 23–4; Human Rights Watch and The International Gay and Lesbian Human Rights Commission, *More Than a Name: State-Sponsored Homophobia and Its Consequences in Southern Africa* (New York: Human Rights Watch, 2003), 205; Graeme Reid and Teresa Dirsuweit, 'Understanding Systemic Violence: Homophobic Attacks in Johannesburg and its Surrounds', in *State Accountability for Homophobic Violence*, ed. Wendy Isaack (People Opposing Women Abuse, Unknown date of publication – ca. 2008), 26.
12. According to Harris, hate crimes are usually group crimes, thus, committed by more than one person. Harris, 'Arranging Prejudice'.
13. Nel and Judge, 'Exploring Homophobic', 23–4; Human Rights Watch and The International Gay and Lesbian Human Rights Commission, 'More Than', 205.
14. Most of the interviewees mentioned that homophobia is common in African culture and white culture in the country, however, and one of the interviewees explicitly mentioned that corrective rapes usually happen 'black and black'. Interviewee number 3, interview by author, Johannesburg, South Africa, July 1, 2010. Although politically sensitive, establishing the profiles of the perpetrators would allow for the shaping of specific interventions aimed at reducing these homophobic attacks. It may be helpful to profile the perpetrator using the categories created by Franklin and cited in Bronwyn Harris, 'Arranging Prejudice', which classifies the perpetrators of sexually motivated hate crimes into ideological assailants, thrill seekers, peer-dynamics assailants and self-defence assailants. For an account of the general profile of perpetrators

- of hate crimes against LGBT people, see: Gregory M. Herek, Kevin Berrill and Kevin T. Berrill, *Hate Crimes: Confronting Violence Against Lesbians and Gay Men* (Newbury Park, CA: Sage Publications, 1992).
15. Interviewee number 1, interview by author, Johannesburg, South Africa, 2 July 2010; Interviewee number 6, interview by author, Cape Town, South Africa, 9 July 2010.
 16. United Nations, 'United Nations Surveys of Crime Trends and Operations of Criminal Justice Systems, Covering the Period 1990–2002', page 1.695, <http://www.unodc.org/pdf/crime/eighthsurvey/5678sc.pdf> (accessed 19 March 2010).
 17. People Opposing Women Abuse, 'Women's Experiences of the Criminal Justice System and Access to Psycho-Social Support', <http://www.powa.co.za/files/WOMENSEXPERIENCESOF-THECRIMINALJUSTICESYSTEMANDACCESSTOPYSCHOSOCIALSUPPORT2007.pdf> (accessed 18 August 2010).
 18. Human Rights Watch, 'Country Summary South Africa 2009', January 2010, http://www.hrw.org/sites/default/files/related_material/southafrica_0.pdf (accessed 19 March 2010); Interviewee number 9.
 19. People Opposing Women Abuse, 'Women's Experiences'.
 20. Charnelle van der Bijl and Philip N.S. Rumney, 'Attitudes, Rape and Law Reform in South Africa', *The Journal of Criminal Law* 73 (2009): 421.
 21. At that time the 'other' was the non-white minority. Interviewee number 13, interview by author, Johannesburg, South Africa, 29 June 2010.
 22. Helen Moffett, "'These Women, They Force Us to Rape Them": Rape as Narrative of Social Control in Post-Apartheid South Africa', *Journal of Southern African Studies* 32, no. 1 (2006): 140. Moffett says earlier in her article, '[o]f course, this is not to suggest that women in pre-apartheid or even pre-colonial South Africa were not policed or controlled, or lived free of the fear of patriarchal violence. But the legacy of apartheid has contributed two critical problems: our subsequent focus on race still tends to repress open scrutiny of gender issues; and the tendency of apartheid to drive violence into intimate and domestic spaces continues to fuel the epidemic of sexual violence'.
 23. For sexual minorities, I refer to lesbians, gays, bisexuals and transsexuals.
 24. Moffett, "'These Women'", 137.
 25. People Opposing Women Abuse, 'Women's Experiences'.
 26. Reid and Dirsuweit, 'Understanding Systemic Violence', 26; Interviewee number 12, Johannesburg, interview by author, Johannesburg, South Africa, 29 June, 2010; Interviewee number 13.
 27. Deborah Posel, 'The Scandal of Manhood: "Baby Rape" and the Politicization of Sexual Violence in Post-Apartheid South Africa', *Culture, Health & Sexuality* 7, no. 3 (2005): 243.
 28. Lezanne Leoschut and Patrich Burton, 'Results of the 2005 National Youth Victimization Study', Centre for Justice and Crime Prevention, <http://www.cjcp.org.za/admin/uploads/Final.RichReward.pdf> (accessed August 19, 2010); Helen Moffett, "'These Women'", 132; People Opposing Women Abuse, 'Women's Experiences'.
 29. Human Rights Watch, 'Country Summary'; Lisa Vetten, 'Zuma Trial: Lessons for Future Rape Trials', *South Africa Labour Bulletin* 30, no. 3 (2006): 55, http://www.tlac.org.za/images/documents/rape_trials_SALB.pdf (accessed 1 September 2010); People Opposing Women Abuse, 'Women's Experiences'; E. Finch and V.E. Munro, 'Breaking Boundaries? Sexual Consent in the Jury Room', *Legal Studies* 303 (2006): 26.
 30. 'Africa Mbeki Questions SA Rape Figures', BBC News, 28 October, 1999, <http://news.bbc.co.uk/1/hi/world/africa/492669.stm> (accessed 19 August 2010).
 31. 'Profile: Jacob Zuma', BBC News, 9 May 2009, <http://news.bbc.co.uk/1/hi/world/africa/4615019.stm> (accessed 1 September 2010).
 32. Posel, 'The Scandal', 243. The black population in South Africa represents around 77 per cent of the total inhabitants of the country, which invariably makes black males the main group of perpetrators in absolute figures.
 33. Gavin Silber and Nathan Geffen, 'Race, Class and Violent Crime in South Africa: Dispelling the "Huntley Thesis"', *South African Crime Quarterly* 30 (2009): 40, <http://www.iss.co.za/uploads/CQ30SILBER.PDF> (accessed 19 August 2010).
 34. Constitution of the Republic of South Africa 1996, Act 108 of 1996, section 9 (3), <http://www.info.gov.za/documents/constitution/1996/96cons2.htm#9> (accessed 20 August 2010).
 35. Mandisa Mbali, 'Gay AIDS Activisms in South Africa Prior to 1994', in *From Social Silence to Social Science*, ed. Vasu Reddy, Theo Sandfort and Laetitia Rispel (Cape Town: HSRC Press, 2009), 94; Mark Gevisser, 'A Different Fight for Freedom: A History of South African Lesbian and Gay Organisation from the 1950s to the 1990s', in *Defiant Desire*:

- Gay and Lesbian Lives in South Africa*, ed. Mark Gevisser and Edwin Cameron (Braamfontein: Ravan Press, 1995), 76–7.
36. I will be using the term ‘trans’ to refer to transsexual, transgender and transvestite people. This inclusive term is widely used in Latin America and increasingly used in countries such as Spain.
 37. Benjamin Roberts and Vasu Reddy, ‘Pride and Prejudice: Public Attitudes toward Homosexuality’, *HSRC Review* 6, no. 4 (2008), http://www.hsrc.ac.za/HSRC_Review_Article-121.phtml (accessed 13 May 2010).
 38. Reid and Dirsuweit, ‘Understanding Systemic’, 9; Gevisser, ‘A Different’, 69; Roberts and Reddy, ‘Pride’; Sheila Croucher, ‘South Africa’s Democratisation and the Politics of Gay Liberation’, *Journal of Southern African Studies* 28, no. 2 (2002): 316. For a brief summary of homosexual and transgender tradition in Black Africa, see Vanessa Baird, *Sex, Love and Homophobia: Lesbian, Gay, Bisexual and Transgender Lives* (London: Amnesty International UK, 2004).
 39. Mikki van Zyl, Jeanelle de Gruchy, Sheila Lapinsky, Simon Lewin Graeme Reid, *The Aversion Project, Human Rights Abuses of Gays and Lesbians in the South African Defence Force by Health Workers During the Apartheid Era* (Cape Town: Simply Said and Done, 1999), 47; Gevisser, ‘A Different’, 69.
 40. For an account of the influence of colonisation on the legal system of South Africa and other African countries colonised by the United Kingdom, see: Human Rights Watch, ‘This Alien Legacy, The Origins of “Sodomy” Laws in British Colonialism’, http://www.hrw.org/sites/default/files/reports/lgbt1208_web.pdf (accessed 13 May 2010).
 41. Reid and Dirsuweit, ‘Understanding Systemic’, 23; Edwin Cameron, ‘Unapprehended Felons: Gays and Lesbians and the Law in South Africa’, in *Defiant Desire: Gay and Lesbian Lives in South Africa*, ed. Mark Gevisser and Edwin Cameron (Braamfontein: Ravan Press, 1995), 91–2; Croucher, ‘South Africa’s’, 316.
 42. Reid and Dirsuweit, ‘Understanding Systemic’, 8.
 43. *Ibid.*, 24; Eileen Rich, ‘Overall Research Findings on Levels of Empowerment of LGBT People in the Western Cape, South Africa’, Triangle Project, http://www.jwg.org.za/component/option,com_repository/Itemid,40/func,startdown/id,22/ (accessed 20 August 2010); OUT LGBT Well-being, ‘Levels of Empowerment among LGBT People in Gauteng, South Africa’, http://www.out.org.za/images/library/pdf/Gauteng_GL_Empowerment_Report.pdf (accessed 20 August 2010); OUT LGBT Well-being, ‘Levels of Empowerment among LGBT People in Kwa-Zulu Natal, South Africa’, http://www.out.org.za/images/library/pdf/KZN_GL_Empowerment_Report.pdf (accessed 20 August 2010).
 44. ‘Lesbian Judge Lashed’, *IOL*, 29 August 2009, http://www.iol.co.za/index.php?art_id=vn20090828042911791C925400&click_id=13&set_id=1 (accessed 13 May 2010).
 45. Uganda criminalised homosexuality and currently the Parliament has been discussing a law to increase the penalties for homosexual offences. ‘DA Questions Qwelane’s Suitability for Uganda Job’, *Mail & Guardian*, 19 January 2010, <http://www.mg.co.za/article/2010-01-19-da-questions-homophobe-qwelanes-suitability-for-uganda-job> (accessed 13 May 2010).
 46. ‘Lulu Xingwana Describes Lesbian Photos as Immoral’, *Mail & Guardian*, 3 March 2010, <http://www.mg.co.za/article/2010-03-03-lulu-xingwana-describes-lesbian-photos-as-immoral> (accessed 13 May 2010).
 47. ‘Zuma Earns Wrath of Gays and Lesbians’, *Mail & Guardian*, 26 September 2006, <http://www.mg.co.za/article/2006-09-26-zuma-earns-wrath-of-gays-and-lesbians> (accessed 20 August 2010).
 48. ‘SA Ducks UN Gay Rights Call’, *Mail & Guardian*, 13 January 2010, <http://www.mg.co.za/article/2009-01-13-sa-ducks-un-gay-rights-call> (accessed 13 May 2010). For example, South Africa is not a signatory of the ‘United Nations declaration on sexual orientation and gender identity’, presented in the General Assembly of the UN in 2008. ‘South Africa’s Gay Betrayal’, *The Guardian*, 21 August, 2007, <http://www.guardian.co.uk/commentisfree/2007/aug/21/southafricagaybetrayal> (accessed 13 May 2010). To see the answer of the South African government about this accusation: <http://www.info.gov.za/speeches/2007/07112712151003.htm>. The most recent example was when the South African representative at the United Nations Human Rights Council stated that placing discrimination on the grounds of sexual orientation at the same level as racial discrimination ‘demeans the legitimate plight of the victims of racism’. ‘SA Fails to Back UN Effort to Protect Gays’, *IOL*, 23 June 2010, http://www.iol.co.za/index.php?set_id=1&click_id=6&art_id=vn20100623044422379C863344 (accessed 20 August 2010).
 49. According to Amnesty International, ‘National human rights institutions (NHRIs) include institutions such as ombudspersons for the defence of human rights, and the institutions in

Latin America known as “defensorias del pueblo” and “procuradorias de derechos humanos”. Such NHRIs can be distinguished from non-governmental human rights organizations by their very establishment as quasi-governmental agencies occupying a unique place between the judicial and executive functions of the state, and where these exist, the elected representatives of the people. The aim of their establishment should be to promote and protect human rights, through effective investigation of broad human rights concerns and individuals’ complaints about human rights violations they have suffered, and through making recommendations accordingly.’ Amnesty International, ‘National Human Rights Institutions: Amnesty International’s Recommendations for Effective Protection and Promotion of Human Rights’, <http://www.nhri.net/pdf/IOR4000701.pdf> (accessed 22 August 2010).

50. The CGE can be considered as a specialised NHRI, which is why the mandate of both state institutions overlap on certain issues such as corrective rape. I will therefore refer to the CGE as a NHRI.
51. Constitution of the Republic of South Africa 1996, sections 184 and 187.
52. Those are the two main ideas highlighted in the literature about NHRIs. See as an example: Rachel Murray, *The Role of National Human Rights Institutions at the International and Regional Levels: The Experience of Africa* (Portland, OR: Hart Publishing, 2007), 6.
53. See United Nations Centre for Human Rights, ‘National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights’, *Professional Training Series No. 4* (New York: United Nations, 1995).
54. Linda C. Reif, ‘Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection’, *Harvard Human Rights Journal* 13 (2000): 1.
55. Anne Smith, ‘The Unique Position of National Human Rights Institutions: A Mixed Blessing?’, *Human Rights Quarterly* 28 (2006): 909; Murray, *The Role*, 6 and 9.
56. Steven Friedman and Shauna Mottiar, ‘A Rewarding Engagement? The Treatment Action Campaign and the Politics of HIV/AIDS’, *Politics Society* 33 (2005): 511.
57. Smith, ‘The Unique’, 940.
58. Regarding CSOs’ loss of independence: Friedman and Mottiar, ‘A Rewarding’, 549. Regarding NHRIs’ loss of independence: Smith, ‘The Unique’, 932.
59. Smith, ‘The Unique’, 941.
60. Interviewee number 5, interview by author, Cape Town, South Africa, 9 July 2010; Interviewee number 10, interview by author, Tshwane/Pretoria, South Africa, 14 July 2010; Interviewee number 11, interview by author, Johannesburg, South Africa, 13 July 2010; Interviewee number 12.
61. Mark Ungar, ‘Lesbian, Gay, Bisexual, and Transgendered International Alliances: The Perils of Success’, in *Forging Radical Alliances Across Difference: Coalition Politics for the New Millennium*, ed. Jill M. Bystydzienski and Steven P. Schacht (Lanham, MD: Rowman and Littlefield Publishers, 2001), 237–8.
62. Bonolo Dinokoplia, ‘Strengthening Civil Society Participation and Advocacy on Human Rights Protection: The Role of National Human Rights Commissions’, *Africa Legal Aid Quarterly Journal* (April–June 2009): 43, <http://papers.ssrn.com/sol3/papers.cfm?abstractId=1601181> (accessed 22 August 2010).
63. People Opposing Women Abuse (POWA), ‘Review of State Institutions Supporting Constitutional Democracy’, Newwritings Blog, posted 22 May 2007, <http://newwritings.wordpress.com/2007/05/22/people-opposing-women-abuse-powa-comments-review-of-state-institutions-supporting-constitutional-democracy/> (accessed 23 August 2010).
64. The National Coalition for Gay and Lesbian Equality (NCGLE) was formed in 1994 and disbanded in 1999. Its main objective was to retain the protection of sexual orientation in the definitive constitution and the decriminalisation of homosexuality. See: Neville Wallace Hoad, Karen Martin and Graeme Reid, *Sex and Politics in South Africa* (Cape Town, South Africa: Double Storey Books, 2005), 11, http://books.google.es/books?id=yA18FLi9aAAC&pg=PA11&lpg=PA11&dq=National+Coalition+for+Gay+and+Lesbian+Equality+disbanded&source=bl&ots=nzEeIrnF__&sig=Y1g7DVQUUa3MBSunsRei1-7zfhl&hl=es&ei=yWxyTMyRKceQjAej95T-7CA&sa=X&oi=book_result&ct=result&resnum=5&ved=0CDEQ6AEwBA#v=onepage&q=national%20coalition&f=false (accessed 22 August 2010).
65. Mazibuko Jara, ‘Gay and Lesbian Rights; Forcing Change in South Africa’, *Southern Africa Report* 13, no. 3 (1998): 31, <http://www.africafiles.org/article.asp?ID=3804> (accessed

- 22 August 2010). 'We got them to the point where they would act, for instance, as amicus, in the decriminalisation of the same-sex conduct, they were amicus' (Interviewee number 1).
66. Smith, 'The Unique', 940.
 67. *Ibid.*, 933.
 68. For an account of the criticism from the feminist movement, see: Sheila Meintjes, 'Gender Equality by Design: The Case of South Africa's Commission on Gender Equality', *Politikon* 32, no. 2 (2005): 259–75. For an account of the problems of the internal problems of the CGE during its first years, see: Gay W. Seidman, 'Institutional Dilemmas: Representation versus Mobilization in the South African Gender Commission', *Feminist Studies* 29, no. 3 (2003). For an overview of the problems of the CGE from its inception, see: 'Gender Body on the Rocks', *Mail & Guardian*, 9 April 2010, <http://www.mg.co.za/article/2010-04-09-gender-body-on-the-rocks> (accessed 22 August 2010).
 69. In 2006, the government set an independent committee to review the functioning of the Chapter 9 institutions, formally denominated as 'Ad Hoc Committee on the Review of Institutions Supporting Constitutional Democracy'. The final report of this committee, informally named 'Asmal report', suggested the merger of the SAHRC and the CGE. This amalgamation would mean, in fact, the incorporation of the CGE into the SAHRC, due to its smaller size and budget. For a summary of the report, see: Idasa, 'The Parliamentary Review of Institutions Supporting Democracy in South Africa (ISDs/Chapter 9 Institutions)', <http://www.idasa.org.za/gbOutputFiles.asp?WriteContent=Y&RID=1979> (accessed 22 August 2010).
 70. For an account of the critics of the feminist organisation to the CGE, see: Meintjes, 'Gender Equality', 259–75.
 71. 'Do or Die for Chapter 9 Institutions', *Songonet*, <http://www.ngopulse.org/article/do-or-die-chapter-9-institutions> (accessed 23 August 2010); Interviewee number 1.
 72. Newritings Blog, <http://newritings.wordpress.com/2007/05/22/people-opposing-women-abuse-powa-comments-review-of-state-institutions-supporting-constitutional-democracy/> (accessed 23 August 2010).
 73. Eight people from five different LGBT CSOs were interviewed for this research: in Johannesburg, two members of the Lesbian and Gay Equality Project (Equality Project), and one member of the Forum for the Empowerment of Women (FEW); in Cape Town, two members of Triangle Project; and lastly, in Tshwane/Pretoria, one member of Out. In addition, another interviewee in Tshwane/Pretoria was a member of the Durban Lesbian & Gay Community & Health Centre (Durban Gay and Lesbian Centre) and, despite having been interviewed mainly in his capacity as a researcher at the Human Science Research Council (HSRC), this person was able to give an account of the general position of that organisation on certain issues. In addition, this section will consider the opinions of the interviewed member of POWA (in Johannesburg), because of the strong interaction of this organisation with the LGBT movement.
 74. Interviewee number 1; Interviewee number 5; Interviewee number 6.
 75. Except FEW, who launched the Rose Has Thorns campaign in 2003.
 76. Interviewee number 5; Interviewee number 10; Interviewee number 11; Interviewee number 12; Interviewee number 14; interview by author, Tshwane/Pretoria, South Africa, 14 July 2010.
 77. Interviewee number 5; Interviewee number 10; Interviewee number 11; Interviewee number 12; Interviewee number 14.
 78. Ungar, 'Lesbian, Gay', 236.
 79. According to Oswin, 'upon its founding in December 1994, the NCGLE's mandate set out the following four objectives for the organization: to ensure the retention of the sexual orientation clause in the new constitution, to decriminalize same-sex conduct, to prepare constitutional litigation to challenge sexual discrimination, and to train a strong and effective gay and lesbian leadership'. Natalie Oswin, 'Producing Homonormativity in Neoliberal South Africa: Recognition, Redistribution, and the Equality Project', *Signs: Journal of Women in Culture and Society* 32, no. 3 (2007): 651.
 80. Hoad, Martin and Reid, *Sex and Politics in South Africa*, 11; Jacklyn Cock, 'Engendering Gay and Lesbian Rights: The Equality Clause in the South Africa Constitution', *Women's Studies International Forum* 26, no. 1 (2003): 37.
 81. Interviewee number 14. For an account of the success of the NCGLE, see: Oswin, 'Producing Homonormativity', 649–69.
 82. Cock, 'Engendering Gay', 44.
 83. *Ibid.*, 44.

84. Oswin, 'Producing Homonormativity', 660–1; Teresa Dirsuweit, 'The Problem of Identities: The Lesbian, Gay, Bisexual, Transgender, and Intersex Social Movement in South Africa', in *Voices of Protest: Social Movements in Post-Apartheid South Africa*, ed. Richard Ballard, Adam Habib and Imraan Valodia (Scottsville, South Africa: University of KwaZulu-Natal Press, 2006), 330.
85. The Joint Working Group, 'JWG Mission', <http://www.jwg.org.za/content/view/84/57/> (accessed 9 September 2010).
86. Ibid.
87. Ananzi, 'Talking to Emily Craven of the Joint Working Group', <http://www.ananziwomen.co.za/cgi-bin/ananziwomen/search.pl?id:1257055266> (accessed 1 September 2010).
88. The Joint Working Group, 'About the JWG', <http://www.jwg.org.za/content/view/64/75/> (accessed 9 September 2010).
89. Prior to 2007, when the 070707 Campaign was started, the only organisation specifically working on corrective rape and other hate crimes against black lesbians was FEW, through a campaign called Rose Has Thorns. By 2007, the campaign was suffering financial problems and, later, the 070707 Campaign, managed by FEW at that time, took on its work.
90. Joint Working Group, 'Info Booklet on the Eudy Enoculate Murder Case', http://www.jwg.org.za/component?option=com_remository/Itemid,40/func,download/id,56/chk,d2964876286-13724d692c24f2252301c/no_html,1/fname,hatecrime_booklet.pdf/ (accessed 2 September 2010).
91. Interviewee number 1.
92. South Africa is unique for having an organisation that has preserved and documented the history of the LGBT struggle. As far as known by the author of this article, there are no similar CSOs, at least in Latin America and Spain. This organisation is GALA, which is also a member of the JWG.
93. Interviewee number 5.
94. Interviewee number 6; Interviewee number 10.
95. Interviewee number 6.
96. Interviewee number 10.
97. Interviewee number 10.
98. Interviewee number 5.
99. Interviewee number 5; Interviewee number 11.
100. Interviewee number 5.
101. Interviewee number 10; Interviewee number 11.
102. Interviewee number 14.
103. Interviewee number 10.
104. Interviewee number 5; Interviewee number 6; Interviewee number 14.
105. Ungar, 'Lesbian, Gay', 236.
106. Hoad, Martin and Reid, *Sex and Politics in South Africa*, 11.
107. Interviewee number 5.
108. Five people were interviewed in these two NHRIs: one in the Western Cape CGE office, and four in the SAHRC, three at the headquarters in Johannesburg and one in the Western Cape office. Regarding the CGE, it was impossible to interview any staff member at the headquarters in Johannesburg; none of them were willing to speak on the record. However, one person agreed to talk informally.
109. Constitution of the Republic of South Africa 1996, section 181 (1).
110. These public bodies, including the CGE and the SAHRC, are usually called 'Chapter 9 institutions', referring to the section of the constitution where they are regulated. Concerning the classification of both state bodies as NHRIs, see section 1 of this article.
111. Constitution of the Republic of South Africa 1996, section 187 (1).
112. Ibid., section 184 (1).
113. Parliament of the Republic of South Africa, 'Report of the ad hoc Committee on the Review of Chapter 9 and Associated Institutions', chapters 11 and 12, http://www.parliament.gov.za/content/chapter_9_report.pdf (accessed 30 August 2010).
114. Interviewee number 2, interview by author, Johannesburg, South Africa, July 1, 2010; Interviewee number 3; Interviewee number 7, interview by author, Cape Town, South Africa, 5 July 2010; Interviewee number 9, interview by author, Johannesburg, South Africa, 2 July 2010. Informal discussion with a staff member of the CGE at Johannesburg.
115. Interviewee number 8, Cape Town, South Africa, 12 July 2010.
116. Ibid.

117. For a summary of Eudy Sibelane's case, see: 'Mixed Verdict in S. African Lesbian's Murder Trial', *New York Times*, 22 September 2009, <http://www.nytimes.com/2009/09/23/world/africa/23africa.html> (accessed 31 August 2010).
118. Commission for Gender Equality, 'CGE Calls for Combating of Hate Crimes', 23 September 2009, http://www.cge.org.za/index.php?option=com_docman&task=doc_download&gid=146&Itemid= (accessed 31 August 2010). For accounts of Commissioner Abrahams speaking out about corrective rape and homophobic violence, see for example: Joint Working Group, 'Statement on the Trial of Zoliswa Nkonyane', 21 April 2008, <http://www.jwg.org.za/content/view/106/74/> (accessed August 31, 2010). Recently, the acting chairperson of the CGE, in an article in the *Mail & Guardian*, stated: 'The issues lesbians, gays, bisexuals and transsexuals (LGBT) face are not properly dealt with. Government should design programmes in schools to raise awareness of LGBT rights. The Commission for Gender Equality (CGE) has realised that communities regard awareness of LGBT rights as "promoting" gay and lesbian practises rather than simply protecting the rights and dignity of people in the LGBT community.' This is one of the few examples where the CGE has publicly dealt with LGBT issues, although the article did not tackle sexual orientation matters exclusively. 'Human Rights Have a Long Way To Go', *Mail & Guardian*, August 19, 2010, <http://www.mg.co.za/article/2010-08-19-human-rights-have-a-long-way-to-go> (accessed 31 August 2010).
119. Interviewee number 1; Interviewee number 5.
120. Nothing was found during the research for this article about any individual work of the CGE in Johannesburg around corrective rapes or any other form of homophobic violence. Moreover, in an informal conversation, a staff member of the CGE in Johannesburg confirmed that the CGE have neither done any work on this issue, nor directly received any case of corrective rape.
121. Interviewee number 2; Interviewee number 3; Interviewee number 7; Interviewee number 9.
122. South African Human Rights Commission, 'Report of the Public Hearing on School-based Violence', 2008.
123. Interviewee number 9.
124. Channel 4, "'Corrective Rape" in South Africa. Jody Kollapen interview', <http://www.channel4.com/news/articles/world/africa/corrective+rape+in+south+africa/+3027797> (accessed 10 September 2010).
125. 'Qwelane, Media 24 Sued Over "Gay Not Okay" Column', *Mail & Guardian*, 22 January 2010, <http://www.timeslive.co.za/thetimes/article272453.ece> (accessed 30 August 2010).
126. KZN is the acronym for KwaZulu-Natal, one of the provinces of South Africa, Durban being its main city.
127. Joint Working Group, 'About the Eudy Enoculate "Styles" Simelane Murder Case', <http://www.jwg.org.za/content/view/111/82/>; (accessed 3 September 2010).
128. Interviewee number 5; Interviewee number 6; Interviewee number 10; Interviewee number 11; Interviewee number 12; Interviewee number 14.
129. The SAHRC and the LGBT CSOs were together on the decriminalisation of same-sex relationships between men, the case concerning the marriage of same-sex couples, and some other issues.
130. Interviewee number 12; Interviewee number 14.
131. According to interviewee number 7, when the SAHRC called for submissions for its report on school-based violence, Out submitted some information about the problem of corrective rape in schools, which was incorporated into the report. However, this was just one of the multiple submissions that the SAHRC received and cannot be considered as a real engagement between the two organisations.
132. Gay and Lesbian Memory in Action (GALA) is another LGBT organisation in South Africa and it is also a member of the JWG. Joint Working Group, 'Gay and Lesbian Memory in Action (GALA)', <http://www.jwg.org.za/content/view/73/46/> (accessed 2 September 2010).
133. Interviewee number 5; Interviewee number 6; Interviewee number 10; Interviewee number 11; Interviewee number 12; Interviewee number 14.
134. Interviewee number 12.
135. Interviewee number 8.
136. Interviewee number 11.
137. Interviewee number 1; Interviewee number 2; Interviewee number 3; Interviewee number 5; Interviewee number 6; Interviewee number 7; Interviewee number 9; Interviewee number 10; Interviewee number 11; Interviewee number 12; Interviewee number 14.
138. Interviewee number 1; Interviewee number 5.
139. Interviewee number 7; Interviewee number 8; Interviewee number 9.

140. Interviewee number 2; Interviewee number 3. One example given was the length of time between the lodging of a complaint and the response of the SAHRC: according to the interviewees, they have to investigate the allegations carefully in order to decide whether or not there is a case, whereas the public expected the SAHRC to act the next day.
141. Interviewee number 3.
142. Interviewee number 1; Interviewee number 4, interview by author, Cape Town, South Africa, July 8, 2010; Interviewee number 11; Interviewee number 12; Interviewee number 14.
143. According to the Asmal report: the CGE was known by 53 per cent of the interviewed people, of those, 64 per cent rated it as effective (34 per cent of the total population), and just three per cent of the interviewees had had any contact with the CGE (two per cent of the population). The SAHRC was known by 65 per cent of the interviewees, of those, 67 per cent rated it as effective (44 per cent of the population), and just six per cent of those aware of the institution had had any contact with it (four per cent of the population). Parliament of the Republic of South Africa, 'Report'. About the public awareness of the internal problems suffered by the CGE, see: *Mail & Guardian*, 'Gender Body on the Rocks'.
144. Interviewee number 1.
145. Interviewee number 12.
146. This issue will be further discussed in section 3 of this article.
147. Interviewee number 5; Interviewee number 8; Interviewee number 9; Interviewee number 12.
148. Interviewee number 12.
149. Interviewee number 2; Interviewee number 3; Interviewee number 5; Interviewee number 7; Interviewee number 8; Interviewee number 9; Interviewee number 11; Interviewee number 14. Informal discussion with a staff member of the CGE in Johannesburg. The CGE has been understaffed for many years as a consequence of lack of resources and internal problems that led many staff members and commissioners to resign. In addition, the economic constraint has been an issue largely denounced by the CGE and feminist organisations and activists. See for example: Meintjes, 'Gender Equality', 271. In an informal discussion with a staff member of the CGE at the headquarters in Johannesburg, this person also argued that the economic constraints reduced the possibilities of working on every single issue; however, the CGE hosted a conference on the problem of witchcraft, a problem that could be labelled as well as a minority issue. Commission for Gender Equality, 'National Conference on Witchcraft Violence', http://www.cge.org.za/index.php?option=com_docman&task=doc_download&gid=122&Itemid=; (accessed 1 September 2010).
150. Interviewee number 9.
151. Commission for Gender Equality, 'Strategic Plan 2008–2013', <http://www.info.gov.za/view/DownloadFileAction?id=88576> (accessed 2 September 2010). It is generally acknowledged that setting qualitative indicators is more complex than setting quantitative ones; however, not all the indicators in the business plan of the CGE are qualitative. Besides, in the case of qualitative indicators, this difficulty is solved using proxy indicators, which have not been explored by the CGE.
152. South African Human Rights Commission, 'Strategic Business Plan 2007/08–2009/10', <http://www.info.gov.za/view/DownloadFileAction?id=94787> (accessed September 2, 2010); South African Human Rights Commission, 'Strategic Business Plan 2008/09–2010/11', <http://www.pmg.org.za/files/docs/080523sahrc.pdf> (accessed 2 September 2010).
153. Parliament of the Republic of South Africa, 'Report', 163.
154. Dinokoplia, 'Strengthening Civil', 43.
155. Commission on Gender Equality Act, Act 39 of 1996, section 6, <http://www.info.gov.za/view/DownloadFileAction?id=70879>; Human Rights Commission Act, 1994, Act 54 of 1994, section 5, <http://www.info.gov.za/view/DownloadFileAction?id=71048> (accessed 20 August 2010).
156. Newwritings Blog, <http://newwritings.wordpress.com/2007/05/22/people-opposing-women-abuse-powa-comments-review-of-state-institutions-supporting-constitutional-democracy/> (accessed 23 August 2010).
157. Interviewee number 5; Interviewee number 10.
158. Gauteng is one of the nine provinces of South Africa and its capital town is Johannesburg. Most of the LGBT CSOs are based in this province, mainly in Johannesburg.
159. Interviewee number 10.
160. Instituto Nacional Contra la Discriminación la Xenofobia y el Racismo, <http://www.inadi.gov.ar/>; (accessed 1 September 2010). Member of the Federación Argentina LGBT, email message to author, 9 September 2010.
161. The report mentioned is the Asmal report.

Notes on contributor

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