

CHAPTER 6: Post Constitution: Legislative Challenges and the Extent of Tolerance of Gay Rights in the 1990s till 2000.

Introduction.

The intention of this chapter is to examine: post-Constitution politics concerning discourses of masculinities, recognizing that there are many gay masculinities, the reorganisation of sexualities, and the responses to this redefinition of homosexuality in the late 1990s. With this comes the recognition that race, class, and sexuality affected the reaction to post-constitutional change, be it social or legal reaction. The legal benefits afforded gay men by the Constitution were not of equal standing when one considers the race and class of gay men. Compounding this is the recognition that lesbian women in black townships stood to benefit the least in that they challenged the hegemonic African definition of masculinity. More specifically, this chapter examines the responses to the constitutional protection of gay men by society. The responses of both gay and heterosexual men, black and white, are considered.

In the 1990s new definitions of masculinities were created. “The gap between what was and what *is* is sometimes so enormous you can hardly believe the recent past was so bizarre.”¹ New spaces for queer visibility, identity politics, and the opportunity for the critique of heterosexist bias were created.² There was quite obviously a change in the treatment of gay men of all races, even Amnesty International’s report on human rights abuses against gay men and lesbians³ favourably singled South Africa out. However, not everyone was happy: “local human rights and gay activists (were) a little less upbeat about South Africa’s progress in the gay rights arena, saying that there (was) little interpretation of the constitutional provisions in practice.”⁴ Gay rights still needed to be fought for in the Constitutional Court for the recognition of same sex relationships.

¹ Luirink and Dodd, ‘Black and Gay in Sunny SA’, p 75.

² Spurlin, ‘Broadening Postcolonial Studies/Decolonizing Queer Studies’, p 186.

³ Entitled ‘Breaking the Silence: Human Rights Violations Based on Sexual Orientation’. Amnesty International, USA, published this report in 1994. In 1997 Amnesty International, UK, updated the report and included a country by country break down of state laws related to sexual orientation.

⁴ P. Naidoo, ‘SA Gets Special Mention for Gay Rights in Amnesty Report, But Abuses Continue’, Sunday

This chapter hinges on the legal entrenchment of gay rights as given by the Constitution, that is the practicality of the Constitution, and black and white societal acceptance of gay masculinities. This chapter is more about changes that are evident regarding gay masculinities and the tolerance of gay rights as opposed to arguing the success of the gay movement. By the mere fact that there was change and heightened tolerance, it has to be said that there were successes concerning gay rights. But was there really “a sense in which the late 1990s (were) the most hopeful and expressive times gay and lesbian South Africans ha(d) experienced?”⁵ In order to attempt to answer this I have relied on both newspaper and academic articles, taking into account possible issues of bias or sensationalism in both areas of discourse. The advantage of numerous resources was that I was alerted to potential biases and could make comparisons between various opinions. It is necessary to point out that much newspaper writing on homosexuality is written by academics within the field.⁶ Although personal opinion and interpretation cannot be discounted in journal articles, these authors’ newspaper reports are grounded in their academic knowledge and experience. There is also a vast scope of newspapers from all provinces publishing reports on homosexuality in the 1990s. To some extent this limited the biases. Another important point is that most legal articles used in this chapter also relied on newspaper articles.⁷

Legislative Challenges.

In South Africa in the late 1990s gay liberation was connected to human rights; homosexuality was an equality issue.⁸ Gay liberation for the NCGLE was more about decriminalising campaigns. “And this...has been one of the remarkable achievements”⁹ of the NCGLE. It was necessary, to prove through legislative changes, that “criminal law is for criminals. Gays and lesbians are not criminals.”¹⁰

Independent, (29 July 1997, AM 2704, GALA), n.p

⁵ Steinberg, ‘Removal of Sodomy Laws Unlikely to have Broad Social Effect’.

⁶ For example M. Gevisser and E. Cameron, P. de Vos, K. Botha, and T. Trengrove-Jones.

⁷ For example E. Steyn used The Star, Weekly Mail and Guardian, The Herald, Business Day, Citizen, and The Beeld.

⁸ Reddy, ‘Institutionalizing Sexuality’, p 173.

⁹ *Ibid*, p 174.

¹⁰ Video: Edwin Cameron in ‘Steps for the Future’.

“The struggle for gay family rights will surely be one of the most significant sites of struggle in defining the boundaries of the equality clause and the protection that it affords homosexual men.”¹¹ Gay men would have to legally fight for the equal recognition of heterosexual and homosexual relationships, same-sex marriage, and adoption.¹² However, “these rights could still take years to win, given the obstructions created by often barely disguised official homophobia.”¹³

New legal premises were created in the late 1990s. Some laws had to be abolished if the Constitution was to be upheld. For example sodomy had to be removed from the Criminal Procedure Act, many sections of the Sexual Offences Act had to be abolished,¹⁴ as well as sections of the Aliens Control Act, the Marriage Act, and the Child Act. “If these premises are accepted, as recent research indicates they should be, then there can be no morally non-arbitrary reason for denying gay men and lesbians the equal protection of the laws.”¹⁵ If the Constitution dictated that all have equal protection before the law “there is thus no basis, which can be countenanced before the law for treating homosexual men and women differently.”¹⁶

As well as scrapping contradictory laws, the principle of non-discrimination had to be targeted at, *inter alia*, employment, tenancies, provision of public resources, and insurance.¹⁷ Also, there could be no discrimination in public decency laws, publications, and the media. There had to be institutional recognition of permanent and committed relationships between people of the same sex and partner benefits in pensions, medical

¹¹ C. Lind, ‘Sexual Orientation, Family, Law and the Transitional Constitution’, in South African Law Journal, vol. 112, 1995, p 494.

¹² Gay parenting occurs in America. In 1987, three million gay and lesbian parents were raising eight to ten million children in gay and lesbian households. (ABA Meeting Provides Forum for Family Law Experts, 13 Family Law Reports (BNA) 1512, 1513 (1987) in Memorandum on Adoption of Children by Gays and Lesbians by Centre for Applied Legal Studies, (3 Nov. 1993), (Kevan Botha Collection, GALA), p 4.

¹³ Rickard, ‘Fighting for the Freedom to Enjoy Sex Without Fear’, n.p.

¹⁴ Mischke, ‘Big Law – Little Wrong’, p 40.

¹⁵ E. Cameron, ‘Sexual Orientation and the Constitution: A Test Case for Human Rights’ in SA Law Journal, vol. 110 1993, p 465.

¹⁶ *Ibid*, p 464.

¹⁷ Steyn, ‘From Closet to Constitution’, p 102.

aid, immigration, and inheritance. Sexual orientation could not matter when it came to the distribution of social goods and services, and social opportunities.

Therefore specific legislation had to be scrapped. For example one of the contradictions of the Constitution versus the law was the age of consent for homosexual (nineteen years) compared to the age consent for heterosexual sex (sixteen years).¹⁸ The notion that gay youths between sixteen and nineteen years of age could not legally have sex was “ridiculous and unfair.”¹⁹ Regarding family rights, only straight couples could marry and adopt. “So for the gay community, the Constitution had not brought about a new and liberated world.”²⁰ The Constitutional Court “is empowered to review the constitutionality of parliamentary legislation” and it became the Constitutional Court’s job to give value to the provisions of the equality clause.²¹ The mere fact that this was possible shows the extent of change in the country by the late 1990s.

Before the Constitution was entrenched “the legal position for male homosexual men (was) appalling.”²² In theory consenting, adult homosexual was prohibited. However, in practice the situation in the 1990s was very different. Gay bars and clubs flourished. Some gay men, both black and white, were out of the closet and the NP government and the SAP knew homosexual was common. Yet nothing was done to prohibit it. There were interviews with gay men in newspapers and magazines and gay relationships were publicised. In practice it was very obvious that homosexuality was everywhere and the law did not interfere. Hence the practical manifestation of equality was beginning to become apparent. However, law reform was still necessary because gay men were not

¹⁸ This was entrenched in Section 14 of the Sexual Offences Act. See Mischke ‘Big Law – Little Wrong’, p 37 and Steyn, ‘From Closet to Constitution’, p 102. South Africa is behind many European countries on the issue of equal age of consent for heterosexual and homosexual boys: in France the age of consent has been 15 years for all boys, regardless of their sexual orientation since 1982, in Germany it has been 16 years of age for all since 1994, Greece 15 years since 1987, (Steyn says Greece still had an unequal age limit in 1998), Iceland 14 years since 1992, Italy 16 years since 1889, Spain 12 years since 1822, and Sweden 16 years since 1978. (Mail and Guardian, 25 July 1997). Belgium, the Netherlands, and Portugal also have equal age limits. However, the UK and Ireland do not. (Steyn, ‘From Closet to Constitution’, p 102).

¹⁹ Basil, Edwin, and Adrian, ‘Law Reform and Gay Rights’, Glowletter, (1990), p 18.

²⁰ G. Daniels, ‘No Rights for Gay men When it Comes to the Law’, The Star, (10 Sept. 1997, AM 2704, GALA), n.p.

²¹ *Ibid*, p 101.

legally protected and those who still insisted on the retention of the traditional hegemonic masculinity had the still-present discriminatory law on their side, should they choose to use it.

A measure of tolerance had even crept into South African courts.²³ “Even before the South African Constitution became the overriding law of the country, judges had already taken a lenient line and imposed light sentences in cases of sex between consenting males.”²⁴ If the courts disapproved of the criminalisation of homosex all anti-gay legislation was becoming redundant if the courts were not enforcing it.

Prior to the new Constitution South African judges had relied on legal and social traditions, which entrenched the power of the NP government.²⁵ Therefore they did not have to consider homosexual and heterosexual men as equal because such a premise did not exist in the country. Hegemonic masculinity was supported in many avenues of South Africa life. But “that tradition was abruptly altered.”²⁶ Gay men had Constitutional rights. The advantage, however, was that the courts were free from the burdens of legal history regarding gay rights because there wasn’t one.²⁷ There were no previous court cases regarding the **rights** of gay men. The courts could begin to create new legal precedents.

In *S v H*, 1993, the magistrate handed down a term of imprisonment for a sodomy conviction. Two senior judges then replaced the magistrate’s sentence with the lightest possible sentence – caution and discharge²⁸ because the private act harmed no one.²⁹ One

²² Basil, Edwin, and Adrian, ‘Law Reform and Gay Rights’, p 17.

²³ Mischke, ‘Big Law – Little Wrong’, p 37.

²⁴ Professor John Milton, from the Law School of the University of Natal in Y. Grimbeek, ‘Judgement Shows Up Sex Laws’, *Mercury*, (6 Aug. 1997, AM 2704, GALA), n.p. An example of this is *van Rooyen v van Rooyen (1994)* where a lesbian mother applied to the court for an order to gain access to her two children. Although the court was prescriptive on how the mother and her partner should conduct themselves in front of the children, it did concede that homosexuality was no longer regarded as sinful. (Mischke, ‘Big Law – Little Wrong’, p 40). Also see the Equality Project’s website for this case: www.equality.org.za

²⁵ Lind, ‘Sexual Orientation, Family, Law and the Transitional Constitution’, p 493.

²⁶ *Ibid.*

²⁷ Mischke, ‘Big Law – Little Wrong’, p 39.

²⁸ *Ibid.*, p 38 and Steyn, ‘From Closet to Constitution’, p 106.

of the judges' decisions was influenced by his anticipation of the equality clause in the upcoming Constitution: private heterosexual acts were not illegal so why should homosexual be?

In 1993 Captain John Baird of the SAP suffered a similar fate. He pleaded guilty to attempted sodomy and indecent assault (performing masturbation and oral sex on another male). His defence attorney commented that South African law was archaic and the courts should stop sentencing gay men.³⁰ Before passing sentence the magistrate said he had considered the fact that a portion of the South African society accepted individuals who had same-sex relations. He said Capt. Baird's behaviour in no way harmed society and the law would be no poorer if this crime was no longer punished.³¹ Capt. Baird was also given a warning and discharged.

After the passing of the Constitution the "NCGLE ... aimed to transform the theoretical principles of the new constitution into actual legal practice, that is, to spearhead the process of overturning discriminatory laws case by case."³² The NCGLE lobbied for equal rights to make social practices and the Constitution more compatible. It was because of the homophobic bias in South African law³³ that the NCGLE and the Human Rights Commission (HRC) took the Minister of Justice, Dullah Omar, to court in 1997 over discriminatory legislation against gay men – that is, for discrimination against consensual same-sex conduct.³⁴ They were not fighting for special rights for gay men, but equal rights. The application challenged the common law crimes of sodomy and other 'unnatural offences' between men, as well as the Sexual Offences Act.³⁵ All the

²⁹ Extract of Current Legal Provisions from Kevan Botha Collection (the Equality Foundation) to Adam Levine Sunday Times Footnote 5 (25 Nov. 1994, Kevan Botha Collection, GALA), n.p.

³⁰ R. Olivier, 'Top Cop on Sex Charges', Herald, (25 Feb 1993, Publication No: 0094, Date: 930225056, Subject No: 159, Document No: 1232, Instituut vir Eietydse Geskiedenis, University of the OFS, Micro-Fiche RAU), n.p. The defence attorney also commented that the rest of the world was not doing sentencing gay men. This was not necessarily so as many countries in the world, especially Africa, were far more homophobic than South Africa. See p 234.

³¹ Ibid.

³² Epprecht, 'What an Abomination, a Rottenness of Culture', p 1096.

³³ T. Mosikatsana, 'Gay/Lesbian Adoptions and the Best Interests Standard: A Critical Analysis Perspective' in Acta Juridica, 1996, p 114 and Steyn, 'From Closet to Constitution', p 97.

³⁴ See Louw, 'Gay and Lesbian Rights', p 85-88.

³⁵ Other anti-gay laws that were challenged were the Criminal Procedure Act which grouped sodomy with

anti-gay laws, it was argued, were also an invasion of privacy and unconstitutional because no corresponding crime existed for heterosexual men. Omar would not repeal any anti-gay laws even though the Constitution protected gay rights. This continues to highlight the fact that just because the ANC, as an organisation, officially supported gay rights, it did not necessarily mean that all its members felt the same way. Also, it seemed that the government lacked the courage to remove discriminatory legislation. Rather, it left these unpopular reforms to the courts.³⁶ Omar wanted the NCGLE application debated in court because he was concerned about children's rights. He aimed to go to the Constitutional Court to oppose the NCGLE's application to invalidate all convictions of sodomy under the Criminal Procedure Act and the Security Officers Act since 27 April 1994, when the Interim Constitution was passed. The NCGLE resented the implication that same-sex relations between consenting adults could be construed as child abuse.³⁷ "The Nats just about managed to control everybody's daily lives. Now the minister, Dullah Omar, seems bent on doing the same."³⁸ However, Omar might have opposed the NCGLE's application because he wanted to appease his Western Cape constituency. He finally withdrew his opposition, probably due to pressure from the ANC³⁹ and intense gay lobbying.⁴⁰ Consequently a landmark judgement in the Cape High Court made male homosexual acts in the Western Cape legal.⁴¹ The NCGLE had initiated and achieved change that gave gay men and lesbians legal standing.

Also in 1997 the NCGLE challenged the Department of Home Affairs on the constitutionality of the immigration of same-sex partners under section 25(5) of the

crimes such as treason and murder and allowed for the arrest of any person reasonably suspected of committing sodomy; the sodomy reference in the Intercepting and Monitoring Prohibition Act of 1992; Section 13 (8) of the South African Police Service Act of 1995, and the Security Officers Act of 1987 because with a criminal record (due to the criminalisation of homosexuality) a man could not become a security guard.

³⁶ Trengrove Jones, 'Fiction and the Law', p 118.

³⁷ Z. Achmat of the NCGLE in E. Gootman, 'Omar 'Leaves Gay men in the Lurch'', Cape Times, (18 Sept. 1997, AM 2704, GALA), n.p.

³⁸ Letter to the Editor from a gay South African, 'The Law on Gay Men is Unconstitutional', Sunday Tribune, (28 Sept. 1997, AM 2704, GALA), n.p.

³⁹ T. Trengrove, 'No More Gay Martyrdom', Mail and Guardian, (21 Nov. 1998), (AM 2704, GALA), n.p.

⁴⁰ Trengrove-Jones, 'Fiction and the Law', p 118.

⁴¹ C. Albertyn and B. Goldblatt, 'The Decriminalization of Gay Sexual Offences: the National Coalition for Gay and Lesbian Equality v the Minister of Justice and Others, 1998 (6) BCLR 726 (W)' in South African Journal of Human Rights, vol. 14, 1998.

Aliens Control Act 1991. Heterosexual spouses could immigrate but homosexual partners could not because they could not legally marry.⁴² Gay men were discriminated against by the act because an immigration permit was only authorised to a person whose *spouse* lived in South Africa.⁴³ The NCGLE wanted Home Affairs to grant permanent residence to same-sex partners in long-term relationships. Home Affairs agreed to an interim measure to grant same-sex couples exemption on merit. Consequently thirteen temporary exemptions were granted in 1997.⁴⁴ Seven months later Home Affairs refused any more exemptions or extensions on previously approved exemptions because it had been overruled by cabinet. This breathing period was for Parliament to rectify the inconsistency between the Constitution and the law.⁴⁵ These exemptions had been granted in special circumstances and because the Aliens Act did not recognise same-sex relationships, special circumstances, for the time being, could not be considered.⁴⁶

Then the Department of Home Affairs asked for a postponement of the case. The three High Court judges refused, ordering the case to go ahead. They expressed sympathy with the gay cause to have relationships recognised in law.⁴⁷ The judges found the Aliens Control Act discriminatory against gay couples because it contradicted the constitutional principles of respect for diversity, equality, and the protection of all relationships.⁴⁸ The court recognised that ‘spouse’ was discriminatory but could not be removed from the Act so instead “or partner in a permanent same-sex life partnership” was read in.⁴⁹ This new legal precedent could become a definition for gay marriage.⁵⁰ The court held that

⁴² C. Chetty, ‘Sexual Orientation as a Constitutional Right’, Journal of Contemporary Roman-Dutch Law, vol. 64, Issue 4, 2001, p 660. Also see A. Pantzis, ‘How to Decriminalize Gay Sex’, South African Journal on Human Rights, vol. 15, Issue 2, 1999, p 191 and S. Motara, ‘Making the Bill of Rights a Reality for Gay and Lesbian Couples’, South African Journal on Human Rights, vol. 16, issue 2, 2000, p 344-350.

⁴³ Pantzis, ‘How to Decriminalize Gay Sex’, p 191 and Motara, ‘Making the Bill of Rights a Reality for Gay and Lesbian Couples’, p 348.

⁴⁴ Motara, ‘Making the Bill of Rights a Reality for Gay and Lesbian Couples’, p 345.

⁴⁵ C. Chetty, ‘Sexual Orientation as a Constitutional Right’, p 660.

⁴⁶ Motara, ‘Making the Bill of Rights a Reality for Gay and Lesbian Couples’, p 345.

⁴⁷ L. Ensor, ‘Sympathy Shown for Gay Fight’, (7 Dec. 1998, AM 2704, GALA), n.p.

⁴⁸ Ensor, ‘Sympathy Shown for Gay Fight’, n.p., Louw, ‘Gay and Lesbian Partner Immigration’, p 318, Motara, ‘Making the Bill of Rights a Reality for Gay and Lesbian Couples’, p 349, and Chetty, ‘Sexual Orientation as a Constitutional Right’, p 663.

⁴⁹ Louw, ‘Gay and Lesbian Partner Immigration’, Chetty, ‘Sexual Orientation as a Constitutional Right’, p 665, and Motara, ‘Making the Bill of Rights a Reality for Gay and Lesbian Couples’, p 349.

⁵⁰ Ibid.

effective remedy had to be immediate and gave the ANC government twelve months to recognise homosexual relationships and amend the Aliens Control Act.⁵¹

An issue the ANC government had to face was that of same-sex marriage, which, in 1997, the ANC stated it supported.⁵² Consequently the Department of Home Affairs requested the South African Law Commission to investigate the Marriage Act of 1961 because it only recognised a union between a man and woman. The Commission was to advise if the law should be amended. It was prematurely presumed that same-sex marriages would be recognised and legislation would fall in line with the Constitution. The campaign to get marriages legally recognised was an uphill battle⁵³ but some believed it was inevitable that the issue of gay and lesbian marriage would come before the courts and it would be difficult for the courts to refuse gay men and lesbians the right to marry.⁵⁴ However, up till the present (2004), no absolute equality had yet been reached. The exclusion of gay people from marriage still remains unconstitutional.⁵⁵

In 1998 the NCGLE continued to challenge the Department of Home Affairs. Six same-sex couples, the NCGLE, and the Commission on Gender Equality brought an application against the Department.⁵⁶ “The matter was decided in favour of the applicants and an appeal was lodged by the minister against this decision.”⁵⁷ Yet again the NCGLE had initiated and secured legal rights for gay people and the change in the legal treatment of gay men and lesbians could not be disputed.

The minister of Home Affairs wanted to fight the NCGLE in court because he did not want a precedent set: if concessions were given to gay life partners unmarried heterosexual partners would also demand similar rights. According to Theresa Solomon,

⁵¹ Motara, ‘Making the Bill of Rights a Reality for Gay and Lesbian Couples’, p 350.

⁵² ‘Same-Sex Marriages to Get the Nod’, *The Star*, (29 Jan. 1998, AM 2704, GALA).

⁵³ P. Singh, ‘Gay men, Lesbians Tell of Fight for Equal Rights’, *Cape Times*, (23 Nov. 1998, AM 2704, GALA), n.p. See Steyn, ‘From Closet to Constitution’.

⁵⁴ Louw, ‘Gay and Lesbian Partner Immigration’.

⁵⁵ G. Van der Walt, ‘Gay Rights and Medical Aid Scheme Membership’, in *Obiter*, vol. 19, Issue 1, 1998, p 197. Cameron does not see why gay men need to get married: it is a heterosexual institution, unnecessary and inappropriate. (Louw, ‘Gay and Lesbian Partner Immigration’, p 320.)

⁵⁶ See Louw, ‘Gay and Lesbian Partner Immigration’, p 313-318.

⁵⁷ Motara, ‘Making the Bill of Rights a Reality for Gay and Lesbian Couples’, p 345.

former Cape Town mayor and member of the ANC, Home Affairs could not really morally oppose the issue of immigration rights for gay partners. She said that South African history was littered with moral issues owing to apartheid and this new moral issue was unnecessary.⁵⁸

Home Affairs' entire conduct during the court case was criticised. Judge Davis said the response of Home Affairs was "tardy and uncaring" as they were dragging their heels.⁵⁹ Achmat said Home Affairs' response was cruel and unjustified.⁶⁰ Papers had been filed in April 1998 yet by December there was still no response from the Department.

One of the most controversial issues regarding the equality of gay and straight relationships was adoption.⁶¹ "It is argued that the (South African) adoption system is fraught with racial, heterosexist and homophobic biases."⁶² Theoretically the 1983 Child Act did not prohibit gay men or women from adopting. However, there was "the presumption that a parent was unfit because of his or her sexual orientation" and prospective adoptive parents were discriminated against because of this.⁶³ The prospective parents had to be of *good repute* and *fit and proper* and the courts relied on "the prevailing heterosexual social norms" to determine this.⁶⁴ Mosikatsana writes that many gay adoptions were denied, based on myths regarding same-sex couples' ability to parent and the affects their lifestyle would have on their adopted children. In *van Rooyen v van Rooyen* the court was worried about a lesbian relationship sending "a 'wrong signal' to the children regarding sexuality."⁶⁵ Other courts would not place children with

⁵⁸ Solomon in Singh, 'Gay men, Lesbians Tell of Fight for Equal Rights, n.p.

⁵⁹ 'Judges Rule in Favour of Gay men', *The Citizen*, (15 Feb. 1999, AM 2704, GALA), n.p.

⁶⁰ Achmat of the NCGLE in 'Judges Rule in Favour of Gay men', n.p.

⁶¹ See T. Mosikatsana, 'Gay/Lesbian Adoptions and the Best Interests Standard', p 114-131. He says "the discourse on adoption is dominated by positivism and liberal theories. Positivism is the dominant paradigm of western societies ... (which legitimises) patriarchally structured and heterosexist legal rules. The South African legal system has been modelled on the positivistic traditions of western legal systems." (p 114). Also, when the state promoted adoption it promoted the Christian-Calvinist doctrine and familial ideology that presumes a heterosexual, two-parent family. (p 120/121).

⁶² Mosikatsana, 'Gay/Lesbian Adoptions and the Best Interests Standard', p 128.

⁶³ Ibid.

⁶⁴ Ibid, p 118.

⁶⁵ Mischke, 'Big Law – Little Wrong', p 41.

gay parents for fear of the children becoming gay or being taunted by other children.⁶⁶ There is, however, no scientific evidence to prove that a parent's homosexuality is detrimental to the child.⁶⁷

In 1997 the ANC government was to investigate custody, access, maintenance, immigration, and adoption rights for gay men and lesbians. But "it may be too hopeful to expect the courts to give the equality clause the bold material life by entirely removing the barriers to legally accepted homosexual families."⁶⁸ This remained the perception up until 2002.

Critics held little hope for the adoption of children by gay men even though the Constitution provided equality. Many believed the Children's Court would still not approve of gay men adopting⁶⁹ and it was advisable for gay men who wanted to adopt to hide their sexual orientation.

On the issue of gay family rights it was again obvious that some individual members of the ANC were not towing the party line. Some progressive members of the ANC's national executive called on the ANC to oppose all discrimination against gay men, and to lobby for gay marriage and adoption. Not all their colleagues agreed with them:

Even though these are the logical consequences of the Constitution, for which the ANC is responsible, the ensuing behind-closed-doors debate was one of the worst bun-fights ever at an executive meeting. Many of those who opposed the resolution were vituperative in their homophobia, restarting the canard ... that homosexuality was alien to African

⁶⁶ Mosikatsana, 'Gay/Lesbian Adoptions and the Best Interests Standard', p 126. However, for the first time in South Africa in 1995 the Johannesburg Child Welfare society, bound by the Interim Constitution, allowed a lesbian couple to adopt because they met the same criteria heterosexual couples had to fulfil. Most tellingly, however, was that there was "a chronic oversupply of babies," especially HIV positive babies, and this was possibly why gay couples were considered as adoptive parents. Mail and Guardian in Mosikatsana, 'Gay/Lesbian Adoptions and the Best Interests Standard', p 129/130.

⁶⁷ Memorandum on Adoption of Children by Gay men and Lesbians by Centre for Applied Legal Studies, (3 Nov. 1993, Kevan Botha Collection, GALA), p 4.

⁶⁸ Lind, 'Sexual Orientation, Family, Law and the Transitional Constitution', p 500. In the Netherlands a commission has announced that gay couples should be afforded the opportunity to marry and adopt. (Steyn, 'From Closet to Constitution', p 112).

⁶⁹ Mosikatsana, 'Gay/Lesbian Adoptions and the Best Interests Standard', p 118.

culture and that the battle of gay equality was anathema to an African liberation movement.⁷⁰

Many ANC members were still uncomfortable about constitutional equality for gay men. The equality clause was acceptable but specific legislative issues that were recognisably heterosexual such as marriage and adoption were not as readily accepted. Consequently the ANC leaders who supported gay equality kept quiet. This is possibly why the ANC was silent on the issue in the 1999 election.

As long as heterosexual legal privileges were denied to gay men (and women) the Constitution had not done its job. “If gay people are denied the right to marry and to enjoy state support for their family relationships, their constitutionally-protected equality will have little content.”⁷¹ It was not enough to decriminalise homosexual conduct or to give equal protection in employment and insurance. Family rights and relationships also needed to be protected, both gay and straight.⁷²

1997 was a challenging year regarding legally entrenching gay rights and this continued the following year. Owing to challenge by the NCGLE, in 1998 the Witwatersrand High Court, Judge Heher, ordered that the common law crimes of sodomy and unnatural sexual acts, the statutory offences in Section 20A, and the schedules to the Criminal Procedure and Security Officers Acts were unconstitutional and invalid. This was because they contradicted the Constitution. Regarding sodomy, the law was discriminatory because it legislated against the sexual acts of gay men, but not heterosexual men. Section 20A targeted gay men only.⁷³ Heher ruled “that because ‘the expression of homosexuality is as normal as that of its heterosexual equivalent and is therefore entitled to equal tolerance and respect’, he could not find the basis for any official discrimination against gay people.”⁷⁴ This meant that gay couples had access to the same benefits as heterosexual

⁷⁰ M. Gevisser, ‘Gay Pride Challenges Prejudice of All Kinds’, *Sunday Times*, (27 Sept. 1998), (AM 2704, GALA), n.p.

⁷¹ Lind, ‘Sexual Orientation, Family, Law and the Transitional Constitution’, p 500.

⁷² Ibid.

⁷³ Albertyn and Goldblatt, ‘The Decriminalization of Gay Sexual Offences.’

⁷⁴ Heher in Gevisser, ‘Gay Pride Challenges Prejudice of All Kinds’, n.p. and Albertyn and Goldblatt, ‘The Decriminalization of Gay Sexual Offences’, p 465.

couples. Undoubtedly the ruling benefited the gay community but Albertyn and Goldblatt, research officers at the Centre for Applied Legal Studies at Wits, also saw it as a missed opportunity. They argued that Judge Heher did not provide a real understanding of the inequality gay people experienced. He gave a formal, as opposed to a substantive understanding of equality, the former being concerned with the right to equality without considering differences and the latter taking cognisance of specific inequalities.⁷⁵ The NCGLE hoped Judge Heher's judgement was more than a rubber stamp.⁷⁶

Judge Heher's ruling did prove not to be a rubber stamp, and was testimony to the changes orchestrated by the NCGLE. According to the Constitution an order like Judge Heher's had to be ratified by the Constitutional Court before it could come into effect and on 9 October 1998 the Court confirmed Judge Heher's ruling. "For once the state acknowledged it had no justification and said nothing to defend the indefensible."⁷⁷ The court found section 20A "absurdly discriminatory."⁷⁸ Hence, by considering one aspect of societal representation, the law, it was becoming clear that the definition of the hegemonic masculinity was changing. In his judgement Judge Ackerman said the only reason sodomy had been criminalised was because it did not conform to society's moral and religious views. Such laws were based on prejudice.⁷⁹ These homophobic laws went against the ethos of the New South Africa⁸⁰ and it was inevitable that the Constitutional Court would remove the legal prohibitions on male homosexuality.⁸¹ Ackerman ruled that anyone convicted of same-sex activity since 27 April 1994 could appeal against his conviction. The NCGLE could not hazard a guess at the number of men convicted since 1994, although according to police statistics it could have been anything from fifty to

⁷⁵ Albertyn and Goldblatt, 'The Decriminalization of Gay Sexual Offences', p 465.

⁷⁶ Rickard, 'Fighting for the Freedom to Enjoy Sex Without Fear', n.p.

⁷⁷ Ibid, "The constitutional court has endorsed substantive equality as the proper interpretation of the right." This does not simply presume equality, like formal equality, but establishes constitutional precedent that gay men and lesbians as a minority group are disadvantaged and vulnerable. (Albertyn and Goldblatt, 'The Decriminalization of Gay Sexual Offences'). Unlike Judge Heher, Judge Ackerman of the Constitutional Court refused to follow a formal equality test. He recognised that anti-gay prejudice had affected gay men's dignity and saw how the anti-sodomy laws had disadvantaged gay men. (Judge Sachs in Pantzis, 'How to Decriminalize Gay Sex', p 190).

⁷⁸ Louw, 'Gay and Lesbian Rights', p 86.

⁷⁹ C. Hills, 'Sodomy, Gay Sex No Longer Crimes', *The Citizen*, (10 Oct. 1998, AM 2704, GALA), n.p.

⁸⁰ The NCGLE in Steinberg, 'Removal of Sodomy Laws Unlikely to have Broad Social Effect'.

⁸¹ Steinberg, 'Removal of Sodomy Laws Unlikely to have Broad Social Effect'.

three hundred men a year. There was such a large discrepancy because police records did not distinguish between consensual gay activity and rape.⁸² Gay men convicted prior to this were not be affected, even though up to four hundred men a year, mostly black, gay men, were convicted of sodomy.⁸³

A victory had been won in the constitutional court.⁸⁴ The ruling did not have a direct or immediate impact on gay men and lesbians but more importantly they realised they really could legally rely on the right to equality, dignity, and privacy provided in the Constitution. Although there is no denying the changes that were occurring regarding gay men, it is questionable to what extent such changes benefited black gay men, especially as they had been most affected by the pre-1990s discriminatory laws yet could not use the new legislation to undo their criminal records.

Another consequence of constitutional protection which also allowed for civil society to challenge the ANC government relating to its politics on HIV/AIDS and more specifically to the supply of affordable anti-retroviral drugs to HIV-positive people was the Treatment Action Campaign (TAC). The NCGLE continued to fight for change. Founding members of the NCGLE founded TAC in 1998 which “played a leading role in forcing Western drug companies to make unprecedented price and patent law concessions in the supply of anti-retroviral drugs to South Africa.”⁸⁵ Achmat realised something had to be done when Nkoli died of AIDS-related causes.⁸⁶ Achmat himself became very ill.

⁸² J. Steinberg, ‘Homosexual Ruling May Motivate Litigants’, Business Day, (12 Oct. 1998, AM 2704, GALA).

⁸³ L. Templeton, ‘Adult Gay Sex is Not a Crime, Court Rules’, Cape Times, (5 Aug. 1997, AM 2704, GALA). In 1993 there were 396 prosecutions for sodomy and 258 convictions. ‘End of 300 Years of Sexual Discrimination Dawns’, Sunday Independent, (24 Aug. 1997).

⁸⁴ This is also called the *Sodomy* judgement. (See Louw, ‘Gay and Lesbian Partner Immigration’, p 313-318). Louw does not see it as an outright victory because although the sodomy offence was struck down in its entirety the crime of unnatural sexual acts was retained, though stripped of its homosexual reference, to legislate against the crimes of bestiality and sado-masochism. These crimes, however, could have been criminalised by other common law offences of assault. Judge Sachs criticised the NCGLE’s application because it predominantly challenged the basis of equality, not privacy as well. As Cameron points out, privacy needs to be challenged so homosexuality is not seen as shameful. Louw does see the *Sodomy* judgement as a victory, however, in that he believes it broke down fears about gay and lesbian parenting and law regarding custody, and adoption would be easier to develop because of this judgement. (Louw, ‘Gay and Lesbian Partner Immigration’, p 319).

⁸⁵ Epprecht, ‘What an Abomination, a Rottenness of Culture’, p 1102.

⁸⁶ TAC, www.tac.co.za, p 2.

His friends helped him to pay for fluconazole but it nearly bankrupted them. Drugs for HIV treatment were unavailable to most South Africans. It cost R2000 per month for three anti-retroviral drugs known as triple combination therapy. So the fight for access to treatment became necessary. The TAC began with fifteen people protesting in Cape Town to demand medical treatment for people living with HIV. The aim was to draw attention to the unnecessary suffering and death caused by HIV/AIDS going untreated. The protesters called on the government to develop a treatment plan for South Africans living with HIV and consequently the TAC was created. “The launch of the TAC opened a new chapter in AIDS politics in South Africa.”⁸⁷

In 1999 the NCGLE was assessed by a private company: Shapiro and Associates.⁸⁸ Knoesen says it was found that there was no expertise within the Coalition and that the gay movement had failed.⁸⁹ The term movement can only be used in the sense that there had been numerous gay organisations, however, there had never been unity of these various organisations. The NCGLE had eighty affiliates but in reality they were not functional and this drained, rather than contributed to the movement. According to Knoesen, after 1994 there was political fatigue and people did not want a mass movement; people had had forty-eight years of this type of mindset. Personal acquisition was more important; people wanted a BMW and a cell phone.⁹⁰ Consequently the redundant Coalition became the Equality Foundation in October 2000. There was nothing holding the NCGLE together because it had been formed to ensure the retention of equality around sexual orientation in the Constitution and this had been achieved.⁹¹ The Foundation’s objective was not to build a movement therefore it did not take affiliates.⁹² GLOW also collapsed in the late 1990s because, according to Mohlahedi, the

⁸⁷ Ibid.

⁸⁸ See the Shapiro Report for the internal audit done by the company on request by the NCGLE. This report is in GALA.

⁸⁹ Interview with Knoesen

⁹⁰ Ibid.

⁹¹ See p 264.

⁹² The Foundation does, however, work in conjunction with: Out (Pretoria), the KZN Coalition, and the Triangle Project in Cape Town.

excitement of the sexual orientation clause was over. GLOW had fought for human rights and that had been achieved.⁹³

The gay liberation movement *per se* might have failed but this is not to say that there were no gay rights successes; there most certainly were. Rights had been achieved, both Constitutionally and backed up by new legal precedents initiated by the NCGLE and ratified by the Constitutional Court. Even though there was no unified gay movement, those players who had secured gay rights by the late 1990s were working with the foundations they had been part of or fought for since the 1970s.

Reactions to Constitutional Rights for Gay Men: The Extent of Acceptance by the Churches, the SAPS, and Society, Both Black and White

According to Walker gay people had never been so visible in South Africa as they were in the late 1990s. The Constitution had created an environment that made it comfortable for some black and white gay men to come out. “Sexual freedom was ushered in by political freedom.”⁹⁴ However, “changing the law is one thing. Changing attitudes is something else altogether”⁹⁵ and attitudes are the building blocks of hegemony.



The Churches

“Under National Party rule, the country had long been stuck in the moral pocket of the ultra-conservative Dutch Reformed Church.”⁹⁶ Even though this might only refer to some of the country, it was part of the nuance of the understanding of the hegemonic masculinity in the country. It could be argued that this perception of the NG Kerk continued in the 1990s, even though, as a counter-argument, there were some changes that threatened this perceived reality. “When it comes to homosexuality and the church, there is an embarrassed silence; an awkward, unexpressed desire for the simple absence

⁹³ Interview with Mohlahedi.

⁹⁴ Walker, ‘Men Behaving Differently’, p 9.

⁹⁵ Jara, ‘Workplace Rights’, p 22. Trengrove-Jones says that if one considers recent gay fiction there is no indication that gay lives have changed for the better or that entrenched ideas of gayness have begun to break down. (‘Fiction and the Law’, p 135).

⁹⁶ Luirink and Dodd, ‘Black and Gay in Sunny SA’, n.p.

of such people from the moral and physical universe.”⁹⁷ The NG Kerk was seen by some to remain homophobic.⁹⁸ Speaking of his experience in the late 1990s regarding the NG Kerk, Sam Markram said: “I walked out when the dominee said that prostitutes and homosexuals were what was ruining the world and that we should be chased from our communities.”⁹⁹ Some felt homosexuality was still considered a disease by some NG churches and some ministers still believed it was their duty to cure this behaviour. However, the NG Kerk said it neither condemned nor encouraged homosexuality and it was up to the discretion of individual ministers to decide whether they would accept gay men.¹⁰⁰ Herein lies the problem: some conservative ministers generally believed that gay men were sinners, and even if such ministers did welcome gay men into the church it was often for counselling. There is a further consideration in that by publicly stating it ‘neither condemned nor encouraged homosexuality’ the NG Kerk showed that change in its opinion had occurred. Even though one could consider this fence-sitting, there was still the opportunity for some NG ministers to tolerate or even accept their gay congregants.



The South African Council of Churches (SACC) said that not *all* affiliated churches would oppose more tolerant policies. The SACC itself had no *strict* policy on homosexuality, and it foresaw no *major* conflict with the ANC’s policies on homosexuality.¹⁰¹ Although the SACC did not outright denounce homosexuality there were many qualifiers such as ‘all’, ‘strict’, and ‘major’. Some churches could therefore oppose tolerant policies. The international denominational conference, the Kwasizabantu Conference,¹⁰² did, however, show that some of the clerical hierarchy was homophobic.

⁹⁷ L. Sampson, ‘Born Again – or Born a Gay?’, (no publication), (Dec. 1998, AM 2704, GALA).

⁹⁸ In an interview with Gerrie, a gay man, he said there was an NG Kerk community in Pretoria that was friendly and accepting of gay men. The Church did not insist it could cure gay men. Cobus, another gay man, however, said that he would not go back to the NG Kerk even though he was brought up in it because it still believed homosexuality was wrong. (Interviews on 5 Sept. 2002).

⁹⁹ Interview with Sam Markram, (11 Dec. 2003).

¹⁰⁰ Traditional Dutch Reformed Dominee, Dr Willie Botha in B. van Eyssen, ‘Reforming Church Caters for ‘Gay Spirituality’ When Others Cannot See Beyond Their Sexuality’, Saturday Independent, (18 May 1997, AM 2704, GALA.), n.p.

¹⁰¹ C. Mathews, ‘Churches Would Welcome More Tolerance’, Business Day, (3 May 1994, Publication No: 1040, Date: 940503123, Subject No: 167, Document No: 397, Instituut vir Eietydse Geskiedenis, University of the OFS, Micro-Fiche RAU), n.p. The italics are mine.

¹⁰² See p 208.

The Roman Catholic Church was contradictory in its attitude towards homosexuality:

Roman Catholicism does not condemn homosexuality outright. Its teachings distinguishes between the tendency, which 'may be innate', and the acts which 'are intrinsically disordered'. That means that gay people do not have the right to a sex life.¹⁰³

Father Power of the John Bosco Catholic Church in Johannesburg says there was little understanding of homosexuality by the Church in the early 1990s. However, in the late 1990s the issue "seems to have come home, there was more respect and understanding."¹⁰⁴ However, there is the possibility that Father Power interpreted this 'greater understanding' by the Catholic Church to be the fact that it counselled gay men. They were given advice and explained "this is your situation..." the Church does not approve of active sexuality and they were encouraged to abstain. Some Catholic Churches had discussion groups where gay men could talk and "encourage each other to abstain."¹⁰⁵ So although homosexuality was not unconditionally accepted, it needs to be recognised that the issue was open for discussion. Herein lies change in the attitude of the Catholic Church.

There were some changes regarding religion and homosexuality but these sometimes tended to be initiated by individuals more so than mainstream churches and their official policies. An ex-NG minister, Rev. Dr Hendrik Pretorius, came out and started his own church, the first and only registered gay church in South Africa,¹⁰⁶ and wrote a book criticising intolerant, traditional interpretations of the Bible.¹⁰⁷ Likewise Germond and du Gruchy analysed Christianity's relationship with homosexuality and challenged the

¹⁰³ J. Hooper, 'Homophobia and Hypocrisy in Rome', Mail and Guardian, (6 Feb. 1998, AM 2704, GALA), n.p.

¹⁰⁴ Interview with Father Power of the John Bosco Catholic Church, (12 Nov. 2003, Johannesburg, 10:00am).

¹⁰⁵ Ibid.

¹⁰⁶ The Reformerende Gemeentes van Gelykes in Christus (the Reforming Congregation of Equals in Christ).

¹⁰⁷ H. Pretorius, Seksuele Diskriminasie, (Homofilos, SA Uitgewers, Pretoria, 1992).

interpretations of anti-gay Biblical texts.¹⁰⁸ These are indications of a shift when it comes to religion and homosexuality.

In the late 1990s there was some change in the Anglican Church and this was especially vocal through Archbishop Desmond Tutu. From early in the 1990s Tutu had been publicly defending gay people. He said, “people’s sexual nature is fundamental to their humanity.”¹⁰⁹ The Anglican Church had repeatedly stated that it could not endorse same-sex relationships.¹¹⁰ Tutu challenged the Church on this stance because it was “illogical, irrational and frankly un-Christlike, totally untenable.”¹¹¹ The way churches treated gay men was blasphemous and “those who made gay men and lesbians doubt that they were the children of God committed the ultimate blasphemy.”¹¹² Archbishop Tutu felt that if the Church was looking for some worthy cause because apartheid had been defeated it needed to look no further than the fight against homophobia and heterosexism.¹¹³ And it could start within its own ranks.

By 1997, although not fully accepting of gay men, the Anglican Church began to show a change in its opinion towards homosexuality. The Church was described as “disappointingly hesitant and squeamish” on the issue of homosexuality.¹¹⁴ It claimed to be tolerant of homosexuality and gay men were welcome, however, gay men were encouraged not to engage in homosex.¹¹⁵ In 1997 the Anglican Church held its decade conference of Anglican Bishops and after being challenged by Tutu it apologised for rejecting people because of their sexual orientation. “‘We repent of this attitude and ask forgiveness of many homosexual people who have been hurt, rejected and marginalized because of this deep-rooted prejudice’.”¹¹⁶

¹⁰⁸ P. Germond and S. du Gruchy, Aliens in the Household of God.

¹⁰⁹ Paton, ‘Heart of Lavender’, p 125.

¹¹⁰ Bullington, ‘The “Devil Dean” of Cape Town’, p 11.

¹¹¹ Book Review by Saint P. Molakeng, ‘Church Challenged to Accept Gay men and Lesbians’, Sowetan, (11 July 1997, AM 2704, GALA), n.p.

¹¹² Rickard, ‘Fighting for the Freedom to Enjoy Sex Without Fear’, n.p.

¹¹³ Ibid and Dunton and Palmberg in Steyn, ‘From Closet to Constitution’, p 104.

¹¹⁴ I. Corbett in Bullington, ‘The “Devil Dean” of Cape Town’, p 11.

¹¹⁵ K. Hunt in Bullington, ‘The “Devil Dean” of Cape Town’, p 11.

¹¹⁶ C. Rickard, ‘Anglican Church Divided on Gay and Lesbian Members’, Sunday Times, (3 Aug. 1997, AM 2704, GALA), n.p.

Despite this apology, in 1998 the South African Bishops of the Anglican Church tried to side step the issue of gay rights. There was no consensus on the issue of gay priests and gay men in the Anglican Church although the Church did recognise that human sexuality was a matter of increasingly urgent pastoral concern.¹¹⁷ The Anglican Archbishop of Cape Town, Tutu's successor, Reverend Njongonkulu Ndungane, suggested the Church set up a commission to investigate the issue of sexual orientation. Change became evident in that the Church was prepared to bless same-sex unions, however it would not recognise the equality between same-sex and heterosexual marriage. When the Anglican Dean of Cape Town, Rowan Smith, came out in 1998 the Church requested him not to practice as a minister.¹¹⁸ It is therefore questionable how sincere the Church's apology was. Some of the public were clearly not ready for Smith's announcement and did not support him: "it is a sad day when a 'spiritual leader' – a messenger/instrument of God and an example to young and old – advertises that he is not only sexually active but homosexual!"¹¹⁹ Some felt leaders of the world were supposed to lead by example. Being gay was disrespectful to God. "What has happened to our society? Is there such a decline in moral values that we condone such behaviour?"¹²⁰ Rev. Smith believed there was nothing sinful about him having a same-sex partner: God had called him to be in such a relationship.¹²¹ Again, although the Church did not lend Smith its unconditional support, the fact that he could come out, as an Anglican minister, shows that change had occurred by the late 1990s when it came to the difficult relationship between homosexuality and the Church.

Pretorius' public views also prove change. He claimed that homosex within a stable, permanent relationship was not condemned by God.¹²² He said God does not accept meaningless, casual sex and promiscuity in either heterosexual or homosexual

¹¹⁷ D. Cassere, 'Dean Hopes to Help Others by Speaking Out on Being Gay', Cape Times, (25 Nov. 1998, AM2704, GALA), n.p.

¹¹⁸ Ibid.

¹¹⁹ Letter to the Editor from S. Petersen, 'Homosexual Dean Sets a Bad Example', Cape Times, (3 Dec. 1998, AM 2704, GALA), n.p.

¹²⁰ Ibid.

¹²¹ Cassere, 'Dean Hopes to Help Others by Speaking Out on Being Gay', n.p.

¹²² Pretorius, Seksuele Diskriminasie, p 97.

relationships.¹²³ He continued that some gay men began to feel comfortable in their stable, long-term relationships in the eyes of God.¹²⁴ For some, their homosexual lifestyle could be reconciled with their religious beliefs even though some mainstream churches still did not agree with this.

Gevisser feels there was change by the churches: “unlike every other African country, the clerical hierarchy (and most notably Archbishop Desmond Tutu) has refused to collude with state homophobia.”¹²⁵ That there was change and Tutu fought for gay rights and denounced state homophobia is undeniable, but I question Gevisser’s assertion that the “clerical hierarchy ... refused to collude with state homophobia.” Surely this degree of change has yet to be proven? Gevisser had, however, earlier said that not even the supposedly more liberal; English-speaking churches had officially come out in support of gay rights.¹²⁶ I do not believe any church in South Africa had done a 180-degree turn and unconditionally supported gay men, only some individuals within their various churches has come out in support of gay rights. However, the mere fact that the subject of homosexuality was in contention at various conferences and that church ministers, be they straight or gay, were beginning to voice an opinion in support of homosexuality clearly shows that religion was treating homosexuality differently and that there were positive changes in the making.

One argument that had not changed since the 1968 Select Committee was the traditionalist versus the revisionist argument of the interpretation of the gay Biblical texts.¹²⁷ The same Biblical texts used before the Select Committee in 1968 were again bandied about in the 1990s. Although societies interpret texts such as the Bible according to their particular context, Pretorius writes that many Biblical texts were still misinterpreted¹²⁸ and some churches did not respect the context of the Scriptures.¹²⁹ The

¹²³ According to a South African gay man in L. Sampson, ‘Born Again – or Born a Gay?’ and Pretorius.

¹²⁴ Pretorius, Seksuele Diskriminasie, p 97.

¹²⁵ M. Gevisser, ‘Properly Armed, Christians Themselves Can Now Face the ‘Six-Gun’ and Bring Gay men Back to the Fold’, Sunday Independent, (17 Aug. 1997), (AM 2704, GALA), n.p.

¹²⁶ Gevisser, ‘A Different Fight for Freedom’, p 82.

¹²⁷ See p 51.

¹²⁸ Pretorius, Seksuele Diskriminasie, p 97.

¹²⁹ *Ibid*, p 107.

1968 argument as to why it was accepted that some Biblical texts were no longer relevant but others were was also revisited in the 1990s. The same question remained: if many Biblical statements had been re-interpreted and accepted, why not the texts on homosexuality? According to Pretorius many church leaders and theologians continued to allow their heterosexism and homophobia to influence interpretation of texts and the theory of theology and sexuality, and this they then preached.¹³⁰ There has been no real change in many churches he said. Real change would only come when the churches and its ministers changed their own attitudes towards homosexuality and were able to minister this attitude to their congregates.¹³¹

Considering letters to editors of newspapers in the late 1990s on the issue of homosexuality and religion, B.R. Burke and E.H. Pringle represented two antithetical facets of South African society. Burke felt that it stood to reason that “if God does not destroy South Africa with fire and brimstone then He will have to apologize to Sodom and Gomorrah.”¹³² He rationalised that if God destroyed the city of Sodom because of homosexual practices, South Africa would be next because of the NCGLE’s victory in the Constitutional Court.¹³³ Burke also reminded the public that HIV/AIDS began in the gay community; it was God’s judgement.¹³⁴ He made the connection that South Africa has the most liberal gay laws in the world and is also one of the nations with the highest HIV/AIDS statistics. Burke epitomised extreme homophobia in South Africa.

E.H. Pringle juxtaposed Burke’s opinion and proved there was some religious acceptance:

If one were to compose a book on the teachings of Jesus Christ concerning homosexuality, it would be a markedly empty volume. Despite the undeniable existence

¹³⁰ Pretorius, *Seksuele Diskriminasie*, p 111.

¹³¹ P. de Vos, ‘The State, the Church and Homosexuality’, *Cape Times*, (22 Aug. 1997, AM 2704, GALA), n.p.

¹³² Letter to the Editor from B.R. Burke, ‘There is Nothing Gay About Sin’, *The Citizen*, (16 Oct.1998, AM2704, GALA), n.p.

¹³³ Ibid.

¹³⁴ Discussions I have had with matric school pupils often took the same direction as Burke. The notion of HIV/AIDS as God’s punishment of gay men is an argument that is constantly exploited.

of openly accepted homosexual relations in the Gentile world surrounding Israel at that time, He apparently did not consider it a 'sin' or 'temptation' worthy of comment or if He did, the Gospel writers forgot to mention it.¹³⁵

In the late 1990s there were many gay church groups, "this country almost boasts more gay churches than it does gay bars."¹³⁶ But such churches were not for all gay men. Some construed these churches as "meat-markets" and too gay and exclusive.¹³⁷ Many gay men wanted something "normal and general" when it came to religion.¹³⁸ But the 'normal' mainstream churches were not preferable for many gay men either because some of these churches still believed homosexuality was a sin that could be overcome: people are not born gay.¹³⁹ However, there most certainly changes regarding the tolerance of gay congregants by most mainstream churches. Even if they were not completely accepting of gay men, or rather the sexual behaviour of these men, it seems the churches welcomed them nonetheless. This did not necessarily mean gay men chose to go to these churches because tolerance does not translate to acceptance and for some gay men this was not reason enough to become members of such churches.

Change from the SAP to the South African Police Services (SAPS)

There was still the desire to maintain the status quo and maintain hegemonic masculinity in the SAP in the early 1990s. Prior to the Constitution it was clear the NP government's definition of a man was still enforced by much of the police force. Some in the SAP were intolerant of homosexuality within the force: "it's unlikely we would ever admit homosexual men, on moral grounds alone, ... South Africa is still a Christian country, and certain norms have to be maintained'."¹⁴⁰ Some older police officers agreed: "we may be struggling, but we're not so bloody hard-up that we have to take 'moffies'."¹⁴¹

¹³⁵ Letter to the Editor by E.H. Pringle, 'Decision on Homosexuality UnChristian', Cape Times, (17 Aug. 1998, AM 2704, GALA), n.p.

¹³⁶ Gevisser, 'Properly Armed, Christians Themselves Can Now Face the 'Six-Gun' and Bring Gay men Back to the Fold', n.p.

¹³⁷ Interview with Gerrie, (5 Sept 2002, Johannesburg, 11:00am).

¹³⁸ Interview with Cobus, (5 Sept 2002, Johannesburg, 9:00pm)..

¹³⁹ L. Sampson, 'Born Again – or Born a Gay?'

¹⁴⁰ P. van der Merwe, 'SA Police Doors Remain Shut on Gay men', Pretoria News, (29 Feb. 1992, Publication No: 0175, Date: 920229060, Subject No: 159, Document No: 1574, Instituut vir Eietydse Geskiedenis, University of the OFS, Micro-Fiche RAU), n.p.

¹⁴¹ Ibid.

The National Police Commissioner said: “the South African Police strongly disapproves of homosexuality, lesbianism, as well as immoral behaviour ...” and believed there were no gay men in the police force.¹⁴² Some policemen felt there were possibly gay men in the police force but it was no place for people with personal problems.¹⁴³ A police spokesman, however, denied the SAP was insensitive or that it discriminated against gay men in any way; the SAP treated all citizens equally, including those within the police force.¹⁴⁴ Conversely the Pretoria News reported that undesirable members were driven out of the SAP using the clause ‘conduct unbecoming a member of the SAP.’¹⁴⁵ Therefore, as a vehicle of hegemonic masculinity, the SAP was perhaps battling to come to terms with the reformulation of masculinities in South Africa in the early 1990s and “discrimination based on sexual orientation, remained (one) ... of the most urgent equity issues confronting the police.”¹⁴⁶

Research into police treatment regarding gay-related issues did not place the police in a good light. The University of Cape Town’s Institute of Criminology’s 1992 phone-in survey found there was a lack of sensitivity by the police in the treatment of alleged gay people and complaints from gay men were not taken seriously. The callers told of incidents of a policeman beating gay men, falsification of evidence, attempted bribery, and the rape of a man charged with soliciting.¹⁴⁷ A police public relations officer insisted the SAP would continue to arrest men for sodomy because the police had to carry out the law.¹⁴⁸ According to research done by two Pretoria University professors 25% of white gay South Africans had been subjected to verbal abuse by police officers and 4%

¹⁴² M. Gevisser, ‘A Lesson in Gay Pride for Police’, Mail and Guardian, (6 Oct. 1994, Publication No: 1074, Date: 941006279, Subject No: 159, Document No: 10464, Instituut vir Eietydse Geskiedenis, University of the OFS, Micro-Fiche RAU), n.p.

¹⁴³ Van der Merwe, ‘SA Police Doors Remain Shut on Gay men’, n.p.

¹⁴⁴ Capt. Attie Laubscher in van der Merwe, ‘SA Police Doors Remain Shut on Gay men’, n.p.

¹⁴⁵ Van der Merwe, ‘SA Police Doors Remain Shut on Gay men’, n.p.

¹⁴⁶ A. spokesperson for SAPS Gay and Lesbian Mindset, ‘Mindset Confirmed, Say SAPS Gay men’, The Citizen, (27 Nov. 1997, AM 2704, GALA), n.p.

¹⁴⁷ R. Friedman, ‘Public Phone-in Asks Police, Prisons to Halt Gay-Bashing’, The Argus, (9 Sept. 1992, Publication No: 0027, Date: 920909253, Subject No: 159, Document No: 6591, Instituut vir Eietydse Geskiedenis, University of the OFS, Micro-Fiche RAU), n.p.

¹⁴⁸ Van der Merwe, ‘SA Police Doors Remain Shut on Gay men’, n.p.

had been subjected to physical abuse. 91% of white, South African, gay men did not report victimisation.¹⁴⁹

In the early 1990s it was therefore necessary for the SAP to be retrained, and brought in line with the Interim Constitution. The NP government had created a police force that enforced a heterosexist definition of hegemonic masculinity and this had to be redressed. The police force needed to realise it was there to protect the fundamental human rights of all people. Officially the SAP took many steps to prove change in its attitude towards gay men. Of course it is debatable as to the practical extent of these changes as not all policeman could possibly change their attitude simply because they had been instructed to.

In 1994 lesbian and gay pride marchers presented a memorandum to Gauteng's Minister of Safety and Security calling for a complete change in the way the police force dealt with homosexuality. The memo recommended a formal police liaison to the gay community, an anti-hate crimes act that included gay-bashing, a ban on police enforcement of anti-gay laws, affirmative action campaigns to recruit openly gay police officers, gay sensitivity training for new recruits, a non-discriminatory code of conduct be adopted by all police officers, and the end to discrimination against gay men and lesbians by the SAPS. The memo included examples of anti-gay conduct in the SAP such as the demotion of gay police officers and charges of gay-bashing against the police.

The SAP's official attitude began to change. The Cape Town police warned gay men about picking up rent-boys after a well-known gay man was murdered. The MEC for Safety and Security in the Gauteng, Jessie Duarte, pledged to end anti-gay discrimination in the police force. The police also tried to help gay men by cracking down on an extortion racket in Johannesburg: scam-men posing as policemen arrested gay men at Zoo Lake and Emmerentia Dam and then extorted an admission of guilt fine from them.

¹⁴⁹ Gevisser, 'A Lesson in Gay Pride for Police', n.p.

Consequently the Parkview police held a gay day where gay victims of extortion and harassment could come forward with information and make statements.¹⁵⁰

The 1994 Draft Policing Document was an attempt at official recognition that there must be change within the police force.¹⁵¹ With the new ANC government came new notions of civil rights and equality. There was official political recognition that the SAP needed to relinquish its notions of power, superiority, and conservatism in order to police effectively in a democratic country, where gay men had equal rights. By recruiting gay policemen and retraining the existing force on the human rights of their communities, it was hoped a new style of policing would become evident. Because of the Constitution gay men had equal rights within the SAPS “and no discrimination in terms of their sexual orientation shall be tolerated.”¹⁵²

Officially then, the SAPS said it wanted community involvement and participation for a safe environment. Therefore it saw good relations with communities as important, including gay communities. The SAPS said it would not allow prejudice to compromise any relationship.¹⁵³ It said it committed itself to equality, accessibility, and effective services to all gay and lesbian persons.¹⁵⁴

The South African Police Act of 1995 aimed to officially recognise the diversity of society and the right of equality of job opportunity. The SAPS stated it would not determine ability, competence or potential on sexual orientation. Any discrimination in the SAPS contradicted the ethical code of conduct and disciplinary action would be taken against any policeman or woman caught discriminating against gay men. The SAPS even

¹⁵⁰ G. Daniels, ‘Police Appeal to Gay Extortion Victims’, *The Star*, (Dec. 1994, Publication no: 0213, date: 941206340, subject no: 159, document no: 13204, Instituut vir Eietydse Geskiedenis, University of OFS, Micro-Fiche RAU).

¹⁵¹ The Minister of Safety and Security, Sydney Mufamadi in Community Policing IV: Module 2 – Diversity Training Focus Group, (Kevan Botha Collection, GALA), p 7.

¹⁵² A. Coetzee, ‘Gay and Lesbian Persons in the South African Police Service’, (no date), (C5) GLOW, South African Organisations, AM 2623, GALA), p 1.

¹⁵³ Coetzee, ‘Gay and Lesbian Persons in the South African Police Service’.

¹⁵⁴ Ibid.

instituted a career-planning department developed a pilot programme of lectures for the new 1995 recruits dealing with racism, sexism, and sexual orientation.¹⁵⁵

The relevance of anti-discrimination training was justified, although it can be questioned just how successful it was. In the late 1990s there were many gay policemen in the force. By 1997 10% of the SAPS was gay yet most were still in the closet.¹⁵⁶ Consequently the SAPS Gay and Lesbian Network under André Coetzee was set up and was one of the fastest growing gay networks in the world.¹⁵⁷ George Fivaz, the National Police Commissioner, approved of the Network. He said he would not tolerate discrimination in the police force and had stood by Coetzee when he had come out.¹⁵⁸ According to Coetzee the Network became necessary because in 1996 three hundred gay (male and female) members of the police force had committed suicide because of discrimination within the SAPS.¹⁵⁹ Of course it must be borne in mind that there could have been other circumstances that led to these suicides not just homophobia within the SAPS. The Network admitted that the SAPS would never be an effective service to the community unless it removed the prejudiced mindset and practices within its own ranks.¹⁶⁰ Once that was accepted the SAPS would be far more effective and better equipped to deal with civilian problems. But the SAPS recognised “there is a long road ahead which is no better emphasized than by one of the deputy national commissioners asking Coetzee if ‘we could not rather try and heal’ him, and then start the network.”¹⁶¹

Perceptions Within Society at Large, Both Black and White

Owing to the change in government, the Constitution, and legal battles, throughout the 1990s I believe there was a greater degree of societal acceptance of gay men, especially

¹⁵⁵ Ibid.

¹⁵⁶ P. Krost, ‘Homosexual men Step Out of the SAPS Closet With Pride’, The Star, (12 July 1997, AM 2704, GALA).

¹⁵⁷ Ibid. Even British gay police organisations looked to the SAPS for advice because of the SAPS Gay and Lesbian Network.

¹⁵⁸ Krost, ‘Homosexual men Step Out of the SAPS Closet With Pride.’

¹⁵⁹ F. Schroeder, ‘Discrimination Drove 300 Gay SA Police to Suicide Last Year’, Cape Times, (1 Aug. 1997, AM 2704, GALA).

¹⁶⁰ ‘Mindset Confirmed, Say SAPS Gay men’, The Citizen, (27 Nov. 1997, AM 2704, GALA).

¹⁶¹ Krost, ‘Homosexual men Step Out of the SAPS Closet With Pride.’

white, gay men: “I no longer felt threatened in public.”¹⁶² There was also increased media exposure of gay issues, which became “a fashionable media phenomenon” and most newspapers supported gay rights.¹⁶³ “There (was) a clear attempt to give ‘free and fair’ coverage of homosexual issues.”¹⁶⁴ Thinking back to the late 1990s some members of the white, gay community agree with this.¹⁶⁵

In 1992 the third annual Gay Pride March took place on Paul Kruger’s birthday. “The last president of the Zuid-Afrikaansche Republiek ... must be spinning in his grave.”¹⁶⁶ Posters said: ‘How dare you presume I am straight!’, ‘Eugene Terre Blanche is heterosexual,’¹⁶⁷ ‘Absolutely Queer’, and ‘Non-Breeder’.¹⁶⁸ The route was cordoned off with marchers to one side and those who preached religion on the other, shouting “shame on you.”¹⁶⁹ The fall of civilisations argument against white, gay men by a Methodist minister could be heard.¹⁷⁰ Other white members of the public interviewed at the march thought gay people should have equal rights and supported them. However, a white, gay man at the march was convinced that if two white men walked through the streets of Hillbrow holding hands people would think they were psychopaths.¹⁷¹ For black, gay men the 1992 march was important because it began to show black, gay men who were in the closet that other black, gay men existed.

The main problem for some black, gay men (and lesbians) was that they were ostracised because some in the townships thought they were witches. However, changes regarding the tolerance of homosexuality in the townships were becoming evident. The father of a black, gay man, Linda, who was a GLOW member, said at his funeral that he was bothered that his son had worn women’s clothing. “If you are a man, wear men’s

¹⁶² Interview with Sam Markram, (11 Dec. 2003, Johannesburg, 5:00pm).

¹⁶³ Trengrove-Jones, ‘The Gay Files’, n.p.

¹⁶⁴ Gevisser, ‘A Different Fight for Freedom’, p 78.

¹⁶⁵ Interviews with Gerrie and Cobus.

¹⁶⁶ C. Leonard, ‘What a Gay Old Day!’, Sunday Times, (11 Oct. 1992, Publication No: 0256, Date: 921011285, Subject No: 094, Document No: 173, Instituut vir Eietydse Geskiedenis, University of the Orange Free State, Micro-Fiche RAU), n.p.

¹⁶⁷ Ibid.

¹⁶⁸ Video: ‘Gay Life is the Best’, (Idol Pictures, 1992, Wits Gay Library).

¹⁶⁹ Ibid.

¹⁷⁰ Video: ‘Steps for the Future’.

clothes.”¹⁷² Later, to diffuse tension between the church that had supported Linda and GLOW, a minister apologised on behalf of Linda’s father for offending anyone who had been at the funeral. “Could anything comparable have happened in the United States? A gay hijacking of a funeral in a church in, say, Atlanta?”¹⁷³

Further headway was made. In his inaugural address, Nelson Mandela “explicitly committed himself and his government to equality for all irrespective of ‘sexual orientation’.”¹⁷⁴ “With the birth of a ‘free’ South Africa, the notion of sexuality was created for some black men, or more precisely, an identity based on sexuality was created.”¹⁷⁵ This made it possible for some gay black men to express their gay identity. Interestingly, it was black, gay men who saw themselves as women who assumed the most prominent roles in embracing this identity.¹⁷⁶ “Obviously this new way of looking at the sexual world was not taken up consistently, evenly, or completely.”¹⁷⁷ Not all black, gay men felt comfortable with a gay identity and therefore remained in the closet. Also, there are many gay masculinities, and no one gay identity could be used to group all gay men together.

The Gay Pride Parades in the later 1990s provided some proof of this new, emerging black, gay identity. Hence there was the belief by some that the Annual Pride March was a black affair. Many white, gay men did not partake in the march because they considered it too political, too ANC, too black. Ironically, many black, working class, gay men also stayed away from the march because they thought it was too political. Also, many white, gay men stayed away because they were too conservative and some black, gay men avoided the march because they had recently come out and preferred to socialise rather than politicise. Also some gay men did not go to the march because there were “too many screaming queens there. Why did you have to go there and make a

¹⁷¹ Video: ‘Gay Life is the Best’. The same description was given at the 1993 Gay Pride Parade.

¹⁷² D. Donham, ‘Freeing South Africa’, p 3.

¹⁷³ Ibid, p 6.

¹⁷⁴ T. Trengrove-Jones, ‘No More Gay Martyrdom’, Mail and Guardian, (21 Nov. 1998, AM 2704, GALA), n.p.

¹⁷⁵ Donham, ‘Freeing South Africa’, p 11.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

public display of your homosexuality?”¹⁷⁸ This underlines the point that there are many versions of gay masculinity.

The 1997 Parade consisted of fifteen thousand participants with a lighter, friendlier mood and five thousand cheering onlookers.¹⁷⁹ In September 1998, eighteen thousand people marched through the streets of Johannesburg in the ninth Annual Gay Pride Parade. Spectators were “entertained, enthralled, bemused.”¹⁸⁰ Drag queens blew kisses at the spectators, who laughed, and blew kisses back. A group of men dressed in long Voortrekker dresses and lace bonnets waved the gay liberation flag and curtsied at the spectators. Parents put their children on their shoulders so they could see better. Even the police who were directing the parade cheered the procession on. ‘I Will Survive’, the universal gay liberation anthem, entertained the crowds, as well as hit songs from ‘The Rocky Horror Picture Show’. The Anglican Church was present and white, gay Anglican clerics walked with a blonde angel with wings. The only aggression was from the white, Christian lay-ministers that lined the route and warned of eternal damnation and hellfire. The participants laughed at them and waved. An evangelist, Neil Winwood, shouted that the sodomites must repent. The response was a barrage of condoms from a passing float covered in safe-sex posters. By his own admission Winwood attended the event every year and thoroughly enjoyed himself.¹⁸¹ The 1998 Gay Pride Parade saw increased numbers, with more black marchers, and glossy, professionally produced placards of advertisement, with corporate sponsorship. “That simple comparison alone speaks volumes about the positioning of gay South Africans over the past decade.”¹⁸²

Initially the tone of Johannesburg newspaper reports on the first Gay Parade in 1990, ranged from disapproval to shock¹⁸³ but by 1998 it seems newspapers were even humouring the religious zealots preaching abomination.¹⁸⁴ The Gay Pride Parade became a media phenomenon, which was as big as the actual Parade itself, and was on all the

¹⁷⁸ Informal interview with Cobus, (12 April 2002, Johannesburg, 8:00pm).

¹⁷⁹ Luirink and Dodd, ‘Black and Gay in Sunny South Africa’, p 75.

¹⁸⁰ ‘Gay Pride Delights, Bemused in Jo’burg’, n.p.

¹⁸¹ Ibid.

¹⁸² Trengrove-Jones, ‘The Gay Files’, n.p. See Video: ‘Steps for the Future’ for 1999 Pride Footage.

¹⁸³ Trengrove-Jones, ‘The Gay Files’, n.p. See chapter 5.

television news channels every year.¹⁸⁵ “It is a truism of our time that the love that once dared not speak its name has now become unstoppably talkative – and unmistakably visible.”¹⁸⁶ But there was the criticism that the media coverage of the Pride Parades was perhaps only because the march was fascinating and newsworthy, as opposed to it being recognised as a gay rights issue. Still in 2000 the parade was screened on television because it was a carnival, not because the television channels necessarily supported gay men.¹⁸⁷ Gerrie, a white, gay South African man, insisted the televised images of the late 1990s parades only focused on the “weird faggots” and this created a false perception of gay men. Not all gay men wear make-up and dresses. In this sense the media created a one-dimensional perception of gay men and this, according to Gerrie had a negative influence on society and the potential for people to accept gay men.¹⁸⁸ Markram says he always disliked the Pride Parades because of the “stereotypes you saw on TV.”¹⁸⁹

The Gay and Lesbian Pride Parade grew, but it could not be seen as “a microcosm of the totality of homosexual experience in this country.”¹⁹⁰ Many South African gay and lesbian communities were still invisible, still considered sinners by many churches, and still deviants by some in society. Gay Pride Parades, in essence, created recognition of certain versions of homosexuality for one day. There was the perception by some that once back to the monotony of every day life the majority of society was really not interested in gay rights, even though some of the public appeared to support the Pride Parades.

But there were also numerous examples of a new-found tolerance of homosexuality in South Africa by 2000, for example lesbian sangomas in Soweto¹⁹¹ and the recognition and support of the potential of legalised gay marriages by some heterosexual members of

¹⁸⁴ ‘Gay Pride Delights, Bemuses in Jo’burg, (no name), (28 Sept. 1998), (AM 2625, GALA).

¹⁸⁵ Trengrove-Jones, ‘The Gay Files’, n.p.

¹⁸⁶ Ibid.

¹⁸⁷ Interview with Cobus. This was still the perception by some gay men in 2003.

¹⁸⁸ Interview with Gerrie.

¹⁸⁹ Interview with Markram.

¹⁹⁰ Gevisser, ‘A Different Fight for Freedom’ p 64.

¹⁹¹ See video: ‘Everything Must Come to Light’, (Dir: M. Njinge, P. Alberton, South Africa, 2001, Wits Gay Library).

communities.¹⁹² Times had changed with the new generation. Although it is only a small dimension of gay identity, an aspect of the gay world that maintained its acceptance was that of the drag queens. Ironically in 1990 the drag queens led the Gay Pride March, yet at the 1966 Forest Town party nine men were arrested for masquerading as women.¹⁹³ Gay communities became evident in numerous small towns between Cape Town and Johannesburg and people became more tolerant.¹⁹⁴ This acceptance was even noticeable in the rural town of Beaufort West in 1999. The male prostitute-drag queens in this town were called Beaufort Queens. The police did not bother arresting them because most of the people of the area accepted them. This “was testimony to the growing atmosphere of tolerance in the country ... If people in Beaufort West (could) accept prostitute-drag queens there must be some acceptance there of homosexual men.”¹⁹⁵ In 2000 drag queens were also accepted in Grahamstown, a town small enough to recognise them but big enough that they would not be harassed for it.¹⁹⁶ Most of the community had accepted them and their dragging society from 1997 when the first drag show was planned. The response was a hall filled to capacity and much applause, which initially shocked the participants themselves as they had not thought they had such degree of support.¹⁹⁷

The media also created the impression that drag queens were tolerated but some members of the gay community did not believe this was the case. They still saw some members of the community as wary and scared of drag queens; they did not understand them and therefore humoured them because they were entertaining.¹⁹⁸ But this perception might have been because a large portion of the gay community itself did not tolerate drag queens: “even the gay community did not like them because of the dresses.”¹⁹⁹ If some in the gay community were attempting to define a version of gay masculinity, they

¹⁹² See video: ‘My Son the Bride’.

¹⁹³ Gevisser, ‘A Different Fight for Freedom’, p 63.

¹⁹⁴ B. Jordan, ‘All Dressed Up and Nowhere To Go’, Sunday Times, (16 May 1999), n.p. and interviews with Cobus and Gerrie.

¹⁹⁵ Jordan, ‘All Dressed Up and Nowhere To Go’, n.p.

¹⁹⁶ Video: ‘Unmasking Mavis’, (Dir: D. Hart, South Africa, 2000, Wits Gay Library).

¹⁹⁷ Ibid.

¹⁹⁸ Interview with Cobus.

¹⁹⁹ Interview with Gerrie.

wanted their definition to encompass just that – masculinity. They did not want their version of gay masculinity to be tainted by other gay men who wore dresses and make up. Drag queens did not aid in reinforcing this emerging masculinity, especially when some gay men wanted to prove that they were more masculine than heterosexual men. The antagonism, therefore, by some gay men towards drag queens is proof that there are many masculinities, including numerous ones within the gay community.

Cape Town²⁰⁰ recognised the spending power of gay tourists and worked to attract the ‘pink’ rand²⁰¹ in the hope that the city would one day become the gay capital of the world. With regards to the late 1990s Gerrie says, “Cape Town is awesome. All the gay Gauteng boys went there.”²⁰² “Cape Town is very gay-friendly ... Foreign visitors compare it to San Francisco – it’s so warm, friendly and relaxed – we can hold hands in the street without any problem.”²⁰³ Since the late 1990s Cape Town Tourism has published an official gay guide for the Cape²⁰⁴ and the city has a gay internet site.²⁰⁵

Although there was growing openness in the gay community there was a decrease in commercial gay activity such as gay clubs and bars; there were far more in the 1980s.²⁰⁶ Possibly this was because in the 1980s gay men had to go to gay clubs, they were not welcome anywhere else. However, in the late 1990s gay men could go to straight clubs so not as many gay venues were necessary.²⁰⁷ Also, in the 1980s there were numerous gay clubs. They were “small, dodgy places, the size of a shoebox.”²⁰⁸ In the late 1990s

²⁰⁰ Cape Town is considered the gay capital of Africa and the second gay capital of the world, after San Francisco. Pillay, ‘Gay and Lesbian Academics are Everywhere’, calls it the Gay Mecca of South Africa. (p 98).

²⁰¹ This is the term used to describe the spending power of the gay community.

²⁰² Interview with Gerrie.

²⁰³ A. van Vuuren, owner of the Abs Fab guest house in E. Thomasson, ‘Cape Town Wants to be World’s Gay Capital’, *Sowetan*, (29 Dec.1998, AM 2704, GALA).

²⁰⁴ This includes an annual party organised by the Mother City Queer Project, and Cape Town tour operators, Gay Escape and African Man, catering for African outings for the gay tourist market.

²⁰⁵ For other information such as general discussions on gay men and lesbians in Africa and discussion groups for young gay Africans see ‘Behind the Mask’ a website magazine on lesbian and gay affairs in Africa, www.mask.org.za.

²⁰⁶ Gevisser, ‘A Different Fight for Freedom’, p 64.

²⁰⁷ Interview with Cobus.

²⁰⁸ Interview with Gerrie.

the gay clubs were “ten times as big” catering for thousands of people so fewer of them were necessary.²⁰⁹

Comparing Homosexuality: South African and Other Countries

This comparison aims to show that even though, by the late 1990s, the fight for gay rights in South Africa was by no means over, it was clear that South African gay men were better off than many gay men elsewhere in the world, especially Africa. I intend to show that South African gay men and lesbians had perhaps been fortunate in their attempts to entrench gay rights, although they might not agree. It can be argued that compared to elsewhere in the world, South African gay men and lesbians are legally privileged, as homosexuality is still illegal in some countries, let alone gay men and lesbians having legally protected rights.

According to Amnesty International, in 1997, Brazil, Peru, Iran, and Zimbabwe were the worst abusers of gay men. In Brazil state-sanctioned death squads hunted gay men down.²¹⁰ In Iran, under Sharia law, a conviction of sodomy receives a mandatory death sentence.²¹¹ To punish gay men the Iranian judiciary lashed alleged gay men or stoned them to death.²¹²



Homophobia exists in the majority of the Southern African subcontinent. Civil war, strife, poverty, and undemocratic systems are common to African states, which I believe create insecurity regarding hegemonic masculinity and power in those countries.²¹³ I think the assumed antidote for this is repression: repression against anything that threatens the already uneasy masculinity and the floundering hegemonic masculinities specific to each context. Consequently it is gender issues that are targeted by the governments. From a gender perspective there has been a rise in conservatism regarding

²⁰⁹ Ibid.

²¹⁰ Naidoo, ‘SA Gets Special Mention for Gay Rights’, n.p

²¹¹ Sharia law stipulates that a gay man must be split in two with a sword or the executioner must dig a hole, make a fire in it, and throw the gay man alive, into the fire.

²¹² I. Brazinet, ‘Gays, Lesbians are Targeted Worldwide’, *Cape Times*, (1 July 1997), (AM 2704, GALA).

²¹³ See www.irinnews.org/report.asp, ‘Ethiopia: US \$1.5 million ADB Grant for Promotion of Women’s Rights’. This report asserts that discrimination against women exists in Ethiopia because of the role women have in the rural communities. It is more the system than men that perpetuate this inequality.

women's rights in some African states over the last ten years. Consequently women have lost ground in many states with neo-conservative governments.²¹⁴ The same has occurred with gay rights. In order to assert hegemonic masculinities other gender definitions, including those of gay masculinities, have been targeted.²¹⁵

Kenyan president, Arap Moi, said homosex is not part of the African culture.²¹⁶ The Namibian finance minister echoed this sentiment saying homosexuality was an unnatural behavioural disorder owing to confused genes. Gay men and lesbians should be operated on to remove these unnatural hormones.²¹⁷ Swazi prime ministers said homosexuality was a sickness and should be regarded as satanic.²¹⁸ Homosexual acts are also illegal in Angola, Botswana, Uganda, Mozambique, Malawi, Tanzania, and Zambia.

Zimbabwe is recognised for its homophobia. Marc Epprecht writes that at issue in Zimbabwe is not necessarily gay sexual activity but rather the behaviour of gay people: a lack of respect for elders and an apparent disinterest in children.²¹⁹ This is how gay men are perceived and are consequently criticized for being gay, when it is in actual fact their behaviour that should be questioned and targeted. Critics of gay rights in Zimbabwe have also commented that GALZ (Gays and Lesbians of Zimbabwe) and other gay organisations have been predominantly white with western donors supporting the organisations.²²⁰ In 1998 Zimbabwean president Robert Mugabe, "the continent's most outspoken homophobe,"²²¹ said any gay person who wanted to live that kind of immoral lifestyle could come to Zimbabwe to be purged.²²² Gay men were considered sexual

²¹⁴ See www.wougnnet.org/Links/africa_int.html, Women of Uganda Network, 'African and International Women Organisations' for resources regarding various women's rights groups and development programmes in Africa. The sheer number of organisations, some working in conjunction with the UN, shows the discrimination against women in some African countries and the gender inequality that exists on the continent.

²¹⁵ See www.mask.org.za/SECTIONS/AfricaPerCountry/ABC/uganda/uganda_52.htm, Behind the Mask, 'Homos Meet in Kampala' for insight into homophobia in Uganda.

²¹⁶ Steyn, 'From Closet to Constitution'. See p 209.

²¹⁷ Duntun and Palmberg as quoted in Steyn, 'From Closet to Constitution', p 107.

²¹⁸ Steyn, 'From Closet to Constitution', p 107.

²¹⁹ Epprecht, 'What an Abomination, a Rottenness of Culture', p 1099.

²²⁰ Ibid, p 1100.

²²¹ Ibid, p 1103.

²²² 'Pro-Gays Hustled Away from Mugabe', The Star, (9 Dec. 1998), (AM 2704, GALA).

perverts,²²³ worse than dogs and pigs; they did not deserve any rights.²²⁴ Mugabe found gay men repulsive and the existence of them was repugnant to his human conscience.²²⁵ Ironically, through his fierce anti-gay stance, Mugabe contributed to the gay rights movement in Africa. His views created such widespread international revulsion that money was donated in support of the gay cause.²²⁶ “He has introduced homosexuality into Zimbabwean discourse in a far more powerful way than GALZ could ever have achieved on its own.”²²⁷ By the same token the NP government, too, contributed to strengthening an awareness of white homosexuality in South Africa. However, at the same time the NP government’s discoveries of white homosexuality and its reactions to it further entrenched the NP government’s power and its definitions and subsequent redefinitions of hegemonic masculinity. The NP government may have contributed to the awareness of white homosexuality but it also used this to reinforce its definition of hegemonic masculinity, thereby entrenching its power.

Even in Britain and America, Amnesty International criticised police brutality against gay men as well as that fact that these countries deny them a fair trial because of their sexual orientation.²²⁸ Except for San Francisco, homophobia was rife in America in the late 1990s: “anti-gay violence is a serious problem.”²²⁹ There have been numerous court cases where bullies have been accused of killing gay men. Twelve American states banned oral and anal sex between consenting adults.²³⁰ The proposed Employment of Non-Discrimination Act was defeated in the Senate in 1996, and in the same year the Defence of Marriage Act was passed denying federal recognition to same-sex unions. In a Time/CNN telephone poll in 1998 48% said homosexual relationships were morally

²²³ Steyn, ‘From Closet to Constitution’, p 103.

²²⁴ P. Tatchell, ‘Anti-Gay Rhetoric is Only a Smokescreen’, Sowetan, (30 Oct. 1997), (AM 2704, GALA) and Dunton and Palmberg in Steyn, ‘From Closet to Constitution’, p 104.

²²⁵ Brazinet, ‘Gays, Lesbians are Targeted Worldwide’ and Dunton and Palmberg in Steyn, ‘From Closet to Constitution’, p 104.

²²⁶ Epprecht, ‘What an Abomination, a Rottenness of Culture’, p 1103.

²²⁷ Ibid. p 1104.

²²⁸ Brazinet, ‘Gays, Lesbians are Targeted Worldwide’.

²²⁹ Mayor Willie Brown in N. Lurssen, Washington Letter, ‘Gay men Smile in the Face of Legal Storm’, in Cape Times, (30 March 1999), (AM 2704, GALA).

²³⁰ ‘Gay men in US Challenge Sodomy Laws’, Citizen, (28 Oct. 1998), (AM 2704, GALA).

wrong.²³¹ In America in 1998 “gay politics (was) more complicated than ever ... because what seemed like an irresistible force of cultural change (was) meeting an immovable object of political resistance.”²³²

In Romania in 1996 a gay man could receive a three-year gaol sentence for homosex in private.²³³ In France a draft bill to give gay couples legal rights similar to that of heterosexual marriage was thrown out of Parliament in 1998 due to a motion from right-wing opposition.²³⁴

The situation was different in South Africa in the 1990s. With the ANC government there was real change, but to what extent and how seriously were gay men taken? Just how much tangible change was there since the early 1960s, considering we still have a conservative morality and homophobic legislators?²³⁵ “Gayness was – still is, in some instances – the thing that goes bump in the night.”²³⁶ For many homophobes who wanted the status quo maintained homosexuality was still to be feared. Thus did the equality clause fulfil its promise? The Constitution gave gay men their rights in theory, but in practice there were legislative challenges that were necessary because the law and the Constitution were contradictory. Theoretically a gay man was equal to a heterosexual man yet he could not marry or claim the same insurance, pension or medical aid benefits²³⁷ or adopt.²³⁸ Nevertheless, as opposed to the situation in the countries

²³¹ R. Locayo, ‘The New Gay Struggle’, Time Magazine, (26 Oct. 1998, (AM 2704, GALA). 45% said homosexual relationships were not a moral issue.

²³² W. Stachelberg, lobbyist for the Human Rights Campaign (America’s biggest gay rights group) in Locayo, ‘The New Gay Struggle’.

²³³ Steyn, ‘From Closet to Constitution’, p 106.

²³⁴ ‘French Gay Rights Bill Thrown Out’, Citizen, (10 Oct. 1998), (AM 2704, GALA).

²³⁵ M. Gevisser, ‘Gay Pride Challenges Prejudice of All Kinds’, Sunday Times, (27 Sept. 1998, AM 2704, GALA), n.p.

²³⁶ Trengrove-Jones, ‘The Gay Files’, n.p.

²³⁷ See van der Walt, ‘Gay Rights and Medical Aid Scheme Membership’, p 193-199. “The consequences of the equality provisions of the Constitution is that medical aid schemes cannot lawfully exclude same-sex life partners as dependants of members.” (p 199). Also see ‘Gay Rights’ in Employment Law 14, no. 1, 1998, p 15-17.

²³⁸ In 2002 the Constitutional Court confirmed the order of the High Court of South Africa (Transvaal Provisional Division) that it was unconstitutional to prevent joint adoption of a child by same-sex couples in a permanent relationship. Currently, in 2004, the Lesbian and Gay Equality Project (the Equality Project) is working on the legal recognition of same-sex marriages. For court cases pertaining to this see www.equality.org.za

mentioned above, legal challenges were both necessary and possible because of the Constitution.

Conclusion.

Because of the anti-apartheid movement, overseas gay and lesbian organisations, a change in government in 1994, a new Constitution in 1996, and the space for the redefining of masculinity many changes occurred regarding the protection of gay rights and the acceptance of gay men during the 1990s.

With the backing of the Constitution the NCGLE fought to legalise gay rights to reconcile legislation with the Constitution. Archbishop Tutu reprimanded the Anglican Church for its homophobic stance, officially, the SAPS began working towards a better understanding of homosexuality, and Cape Town targeted the gay tourist market. Even Amnesty International was impressed with South Africa's liberalism towards gay men. The ANC had most definitely moved on since the 1987 Mompoti/Smith incident. Cheryl Carolus, an ANC national executive committee member, believed an openly gay man could hold high office in the ANC, although admittedly, it would be tough and meet with opposition.²³⁹



²³⁹ Kraak, 'Cheryl Carolus Speaks', p 5.