



triangle project

Challenging Homophobia
Appreciating Sexual Diversity

Presentation to Parliamentary researchers
Corrective rape: Patterns, knowledge gaps and human rights
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Who we are

Triangle Project is a non-profit human rights organisation offering professional services to ensure the full realisation of constitutional and human rights for lesbian, gay, bisexual, transgender and intersex (LGBTI) persons, their partners and families.

Our three core services centre around Health & Support, Community Engagement & Empowerment and Research & Advocacy. We offer a wide range of services to the LGBTI community. These include a variety of health services, such as sexual health clinics, counselling, support groups, a helpline, public education and training services, community outreach and a library.

Why are we positioned well to talk to you today?

Triangle Project is the oldest LGBTI organisation in South Africa, and is one of the only organisations that offers such a wide range of services and programmes. This means that we interact with survivors of such crimes – or surviving families of victims – and offer long-term support. In addition, Triangle Project is a member of the steering committee of the Hate Crimes Working Group, which is a multi-sector civil society grouping that has funding to conduct a 4-year study on hate crimes in South Africa

We have been invited to this seminar to discuss corrective rape but it is helpful to begin with why we as an organisation view this as a problematic term. Triangle Project views the targeted rape of lesbian and bisexual women not just as hate crimes used to punish and police, but as part of a larger problem of gender-based violence and violent patriarchy. We therefore do not think it is helpful to try address the rape of lesbian and bisexual women removed from the wider context of gender-based violence and violent enforcement of gender norms. The current term ‘others’ the sexual violence against LGBTI persons, and in particular LBT women – as if they are somehow not women, not ‘normal’. Further, the naming of the experience legitimises the rationalisation of the perpetrator for the act. For the perpetrator there is a clear distinction between rape generally and corrective rape that legitimise his actions. In other words, the perpetrator is teaching the victim through coercive power normative ways of being gendered and expressing ones sexual identity. In particular it reinforces unequal gender and sexual power relations, as the term bestows on the perpetrator the authority to ‘correct’ ‘the other’. This does not mean that we do not use the term – it exists in the public consciousness already – nor that we do not think that LBT women have specific vulnerability that must be addressed.

Overview and knowledge gaps

Under-reporting

When we discuss corrective rape it should be admitted from the outset that like most forms of sexual violence, we are looking at an incomplete picture and we can discuss this incomplete picture as resulting from three different but related causes. The first is the generally low level of reporting for sexual assaults, not just in South Africa, but globally. This problem is linked to low levels of confidence and trust in the police and the threat of secondary victimisation. The Medical Research Council (MRC) estimates that 88% of rape cases go unreported due to factors such as fear of not being believed, trauma, and fear of secondary victimisation. Secondary victimisation can be

particularly severe for LGBTI persons who are often met with disbelief, mocking statements or blame when they report incidents to the police (Human Rights Watch, 2011). This of course leads to severe under-reporting of LGBTI-related violence in particular. In research conducted among survivors of homophobic hate crimes in the Western Cape, 66% of women said they did not report their attack because they would not be taken seriously. Of these, 25% said they feared exposing their sexual orientation to the police and 22% said they were afraid of being abused (Triangle Project & UCAP, 2006). Triangle Project attended the University of Cape Town's summit on the implementation of the Sexual Offences Act, where we discussed that for LGBTI survivors in particular, the implementation of the act has failed to address sexual violence being perpetrated against them.

The third issue relates to a problem of policy, here the issue is not the barriers to reporting, but the fact that there is no way to capture a rape as a corrective rape for the purpose of crime statistics. This lack of data also highlights the lack of research, advocacy and policy capacity within South African civil society in general and more acutely within LGBTI NGOs and therefore the inability to set a clear research agenda. This lack of capacity becomes a larger in problem when the role of civil society in recording and responding to these crimes is taken into account.

Patterns of the crime

We do not have a full picture of the incidence of this crime but through work done by Triangle Project and other organisations over a number of years as well as research done on the topic we can establish several patterns the crime follows. First, that the motive is homophobic as much as it is misogynistic and patriarchal. What do we mean by this? The driver of the crime may have something to do with the sexual orientation of the victim, but the attack forms part of a wider problem of violently sanctioning those who do not comply with gender norms. We can gather this from the testimony of survivors who were told "We'll show you you're a woman" or "you think you're a man" here we can see that the attacks are driven by women's attempts to define themselves and their bodies outside of what has been deemed "acceptable".

Linked to the point of policing bodies is the pattern of extreme violence linked to such attacks. Victims are frequently raped and murdered but further to this, there is often body mutilation or signs of extreme violence. Victims have been stabbed dozens of times in what appears to be a frenzy, have had their vaginas cut out or genitals mutilated, the genitals and legs set on fire, acid poured over their body, had their throats slit almost to the point of decapitation, been stoned to death and many other instances of violence that are extreme even within the context of violent crime in South Africa. What becomes clear is that the attackers do not wish merely to kill their victims, but to destroy the offending body. We can view this extreme violence and mutilation as an expression of homophobia and as a marker that sets these crimes apart and merits our specific attention and concern.

The third pattern that emerges is that vulnerability for these types of attacks is not connected to sexual orientation simply – for instance white lesbian women have not experienced this crime in a similar way to black women – but it is interconnected to other vulnerabilities like gender and socio-economic conditions. Further, black lesbian women suffer more severe sanctions than other LGBTI persons, as their

sexual identity is viewed as culturally deviant and “unAfrican” – which compounds other vulnerabilities experienced in among this group.

In addition, like all other forms of sexual assault, there is an over-emphasis, even in the Department of Justice and Constitutional Development’s own television advert, on what has been termed ‘stranger danger’. This portrays hate crimes against LGBTI persons, including sexual assaults, as committed by strangers. This is not the case, and with corrective rape, victims and survivors are often attacked by someone they know. An example of this is the murder of Duduzile Zozo who was murdered by a male friend after she rebuffed his sexual advances. This man was friends with Duduzile and they had been drinking in each other’s company that evening; so from the outset, this man does not appear to be our typical picture of a violent homophobe. His violence and his anger surface not because Duduzile is a lesbian, but when it becomes clear that her sexual orientation denies him sex that he feels he is entitled to.

Rape remains a largely feminised epidemic, impacted by several intersecting vulnerabilities and power discrepancies between men and women and girls. While this focus is merited, this can be detrimental to the men and boys who experience rape and sexual violence. While the Sexual Offences Act of 2007 for the first time recognised other forms of sexual assault as the rape that they are, other initiatives have not been forthcoming to align the thinking of the Act with the response of service providers. Male rape victims face increased stigma and shame and have difficulty accessing services such as PEP. This gap in implementation serves as secondary victimisation to men and boys – estimated to be one in 30 men – who are the survivors of rape. Male on male rape has also been seen as a trend in hate crimes against gay and bisexual men. For these men, the failures of the system to cater for male rape survivors is compounded by homophobic prejudice experienced when LGBTI persons engage with service providers. We must be aware of the geography at play and its affect on the way sexual assault on LGBTI persons is found. While the urban township context is no doubt a very dangerous space for black female LGBTI individuals, from Triangle Project’s admittedly anecdotal evidence from our work in rural areas, it is male LGBTI persons who are experiencing sexual assault at very high levels.

Human rights and Constitutional framework

Bill of Rights

South Africa’s legal framework guarantees equality and non-discrimination. An overview of the Constitutional rights affected by corrective rape include:

- S9: Equality;
- S10: Human dignity;
- S11: Life;
- S12: Freedom and Security of the person;
- S18: Freedom of association;

Survivors of attacks are unfortunately likely to experience a further violation of their rights following their attack, including:

- S27: Health care;

- S32: Access to information.

The current framework is extensive, however poor application means that the rights in the bill of rights remain practically unenforceable for LGBTI persons who do not have resources themselves. Corrective rape constitutes a severe infringement on the constitutional rights of LGBTI persons, and while this collection of rights must be relied on to demand protection from victimisation and access to services, we must acknowledge that substantive equality will not come from these rights alone.

Criminal law

The criminal justice system remains completely over-burdened and ill equipped to handle sexual assault cases in general and cases involving LGBTI persons in particular. Even with the reintroduction of the sexual offences court, this is not likely to change, with no specific mention of LGBTI sensitivities in existing guidelines.

The current Criminal Procedures Act make it possible for a presiding officer to find the homophobic or transphobic motive for a crime as an aggravating factor in sentencing an accused. However, in the many years Triangle Project has been tracking such cases, this tool has been used twice – in the murder case of Zoliswa Nkonyana and that of Duduzile Zozo. Part of the weakness of this tool is that, without training and sensitisation of the SAPS and the NPA this aggravating motive is not investigated, presenting a presiding officer with little evidence to base such a sentence on.

What this tells us

What all of the above leads us to conclude is that corrective rape is not a problem on its own, but falls within a wider problem of using violence to punish those who do not meet “normal” gender roles and within the larger problems of unacceptably high levels of gender-based violence. Consequently, this issue is not one that can be tackled on its own, but must rather be subject to a holistic and considered approach by stakeholders including policy-makers, NGOs, all spheres of government and communities themselves.

Recommendations for parliamentary researchers

Addressing the roots of crimes while addressing specific vulnerabilities

This submission, as well as other material available from Triangle Project, wishes to emphasise the intersectionality of oppression that drives crimes against LGBTI persons. Drafting responses to these crimes requires an understanding that LGBTI victimisation may exist in a larger framework of GBV and high levels of violence, but that LGBTI persons still experience specific types of victimisation and at higher levels. The need to address the framework should not camouflage the specific risks faced by LGBTI persons.

Holistically include LGBTI concerns into legislation

So many pieces of legislation and policy make well-intentioned mention of LGBTI persons – perhaps within a commitment to non-discrimination – but this commitment to substantive equality rarely flows through an entire document, leaving LGBTI

people included in name only. Without fully understanding the needs of LGBTI persons and substantively integrating this understanding into policy interventions, it amounts to exclusion of LGBTI persons.

Ongoing and substantive consultation

A Civil Society Organisation like Triangle Project is very pleased to have this opportunity to address you today but our engagements must be more frequent and more substantive. In recent months, Triangle Project has engaged with the National Youth Policy 2014-2019, the Women Empowerment and Gender Equality Act, the White Paper on Policing and the Sexual Offences Amendment Act, to name a few, and plans to have even more engagement in the coming years. LGBTI people's issues are not related only to violence and sex acts, and therefore neither is our engagement with issues.