

GUNS AND ROSES

ADVOCACY IN AN EMERGING DEMOCRACY



Case Study

Written for The Atlantic Philanthropies, February 2009

Cover Image: January 2008: Zackie Achmat, Chair of the Treatment Action Campaign, marries his partner Dali Weyers, at a civil ceremony in Lakeside, Cape Town. In 2006 the Constitutional Court instructed the state to recognize same-sex marriages.

Photograph: Esa Alexander, Sunday Times

Key

Children playing with highly realistic toy guns is a first step in entrenching a culture in which possession of weapons is regarded as normal. During its campaign, Gun Free South Africa persuaded a number of department stores to take toy guns off their shelves. Supermarket chain - the OK Bazaars - went as far as publicly crushing their stock with a bulldozer, outside the Johannesburg City Hall, to highlight its support for a gun-free society.

ANC	African National Congress
CALS	Centre for Applied Legal Studies
DA	Democratic Alliance
GCA	Gun Control Alliance
GFSA	Gun Free South Africa
JWG	Joint Working Group
LGBTI	Lesbian, gay, bisexual, transgender and intersex
LGEP	Lesbian and Gay Equality Project
MK	Umkhonto we Sizwe
MP	Member of Parliament
NCGLE	National Coalition for Gay and Lesbian Equality
NCOP	National Council of Provinces
NEC	National Executive Committee
NGO	Non-governmental organisation
SACC	South African Council of Churches
SAGA	South African Gun Owners' Association
SAPS	South African Police Service

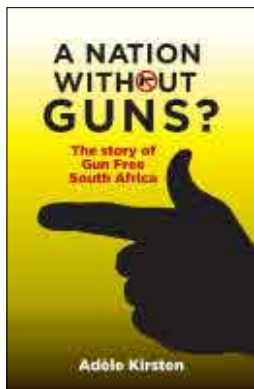
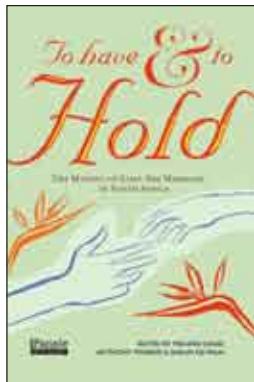
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Introduction



Advocacy, or the active support of a cause, idea or policy, is as old as the story of humankind. To hold a position or belief and to argue for it is as much a part of us, as the ability to speak and express an opinion. Using advocacy as a non-violent strategy to bring about social change is an integral part of a constitutional democracy. The Constitution was adopted to “lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law” and to “improve the quality of life of all citizens and free the potential of each person”. The years since 1994 in South Africa have shown that the Constitution provides a basis for the realisation of human rights but also that citizens need to fight for each step along the way to move from rights to realisation. When apartheid went, the struggle was not over.

In this publication we aim to show how, in two particular instances, advocacy has been effectively used in South Africa in the post-1994 period, to bring the rights enshrined in our Constitution closer to reality. There is no “best way” to do advocacy, other than to learn from the struggles of others and build on their learnings. This publication draws on three others:

To have and to hold: The making of same-sex marriage in South Africa, edited by Melanie Judge, Anthony Manion and Shaun de Waal, Fanele, 2008

A nation without guns? The story of Gun Free South Africa by Adèle Kirsten, University of KwaZulu–Natal Press, 2008

A strategic evaluation of public interest litigation in South Africa by Gilbert Marcus and Steven Budlender, The Atlantic Philanthropies, 2008

We have had permission to draw on all these publications. The first two tell fascinating stories of how ordinary citizens were involved in making our Constitution a living document. The third, while it focuses on public interest litigation, draws invaluable lessons from an overview of the way in which advocacy is most successfully pursued to achieve lasting social change.

Acknowledgements

This publication is based on the insights, and often the words, of the three publications acknowledged above. The idea of the publication arose from an appreciation of the richness and value of these publications and a desire to make some of the insights in them accessible to more people. We hope we have done them justice. In addition, Fikile Vilakazi, Melanie Judge and Adèle Kirsten all made time to speak and communicate with us while we were writing the publication in order to clarify or elaborate on certain issues. For this we are very grateful.

In summary

This publication is an attempt to distil the learnings from three important books that were published during 2009 and which provide valuable insights into doing advocacy in an emerging constitutional democracy. After looking briefly at the constitutional basis for this advocacy work, we give some background to the two campaigns highlighted in our publication: the Gun Free South Africa (GFSA) campaign to reduce the number of firearms circulating in our society, and the campaign for the recognition of same-sex marriage conducted around the Civil Union Act by organisations from the organised lesbian, gay, bisexual, transgender and intersex (LGBTI) sector. The campaigns were very different in terms of the issues they addressed. While there are strongly held beliefs about gun-ownership, the same-sex marriage issue went to the heart of beliefs and culture and a perceived clash between the secular and sacred. Nevertheless, the structures of the campaigns were not that different and they highlight core challenges that advocacy campaigns in a constitutional democracy such as South Africa face. Using all three of the source publications, we attempt to put together a framework for successful advocacy in this situation, discussing each of the two campaigns under the headings of:

- Clarification of the issue and defining the goals
- Researching the issue and understanding the context
- Building strategic partnerships
- Mobilising specific constituencies and communities
- Working with the media
- Lobbying
- Working through the parliamentary process
- The struggle continues.

While condensing the rich experience of the two campaigns inevitably means that some of the detail and insights are lost, we have tried, wherever possible, to quote from the sources and use their insights. Anyone interested in doing advocacy work in a constitutional democracy would do well to go back to all three of the source publications.

Our conclusions in the final section are our own and are an attempt to build on the learnings of the authors and writers, while suggesting, based on their insights, how the framework could be extended to some degree.

Marian Nell

Janet Shapiro



A gun-owner practicing at a gun academy in Johannesburg. As a result of the GFSA's advocacy the Firearms Control Act of 2000, regulates the ownership and carrying of weapons much more strictly than in the past.

Photograph: Helen Macdonald

I. Why do we need advocacy?

“One of the key elements in the story of the gun-free movement in South Africa is the ability of ordinary people to bring about change – by mobilising, organising and campaigning.”

From A nation without guns (page xii)

The Atlantic Philanthropies defines public policy advocacy as an approach which “aims to bring about a change in public policy or the law, its interpretation or its application, typically with the objective of correcting a perceived injustice or achieving specific legislative, legal or other change”.¹ Both the case studies cited in this publication aimed to bring about legislative change. They recognised, however, the importance of linking this to changing attitudes in the society in which the laws would operate.

That society was a very particular one: post-1994 South Africa, a country which first had an interim Constitution and then, after 1996, a final Constitution which was, and is, considered one of the most progressive in the world. Before 1994, there was a single enemy against whom the struggle could be waged: apartheid. Post-1994, the way was opened for citizens and communities to identify specific issues that mattered to them and to use the tools of democracy to make the Constitution deliver on its promises with regard to those issues. There was space for issue-based advocacy but no inevitability about winning issue-based rights. The new challenges called for a different kind of activism and activists. Even those who had had their skills honed in the pre-1994 era found themselves on a sharp learning curve. Their role was no longer to resist what was clearly wrong, but to demonstrate that it was now possible for ordinary citizens to change the world by using the power conferred on them by the existence of the Constitution and the Bill of Rights contained within it.

Chapter 2 of the Constitution deals with the Bill of Rights. As we are repeatedly told, it is “a cornerstone of democracy in South Africa”. It “enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom”. The state is obliged by the Bill of Rights to “respect, protect, promote and fulfil the rights” enshrined. But sometimes the state needs a nudge in understanding what that means and some encouragement in meeting its obligations. In some instances, as examples of public interest litigation show, it even needs a push. Since 1994, there have been many instances in which this has been demonstrated and many issues that have required an active citizenry to ensure that rights become reality.

¹ From Atlantic Reports: Why supporting advocacy makes sense for foundations, May 2008.



The campaign for the recognition of gay marriage has encountered strong opposition from the religious right. Here a group of Muslims picket outside the opening of the first-ever gay and lesbian film festival at the Monte Carlo Cinema, in Cape Town, in 1994

Photograph: Out in Africa

There have been successes and failures and partial successes. In all of them, advocacy has played some role and it has often been the efficacy of the advocacy that has made the difference between the degrees of success and failure. Here we deal specifically with campaigns around two of the rights:

- The right to equality and, specifically, the right to be free from discrimination based on sexual orientation²; and,
- The right to freedom and security of the person, particularly the right to be free from “all forms of violence from either public or private sources”³.

Many of the other rights in the Constitution have been argued in the public domain, among them the right to freedom of expression, the right to fair labour practices, the right to property, the right to housing, to health care, food, water and social security, the rights of children, the right to a basic education, language and cultural rights, the right to access to information, and others. Some would argue that the Constitution has opened a real Pandora’s box that exposes every conceivable right to discussion and advocacy.

Others would respond that that, surely, is the essence of democracy: an engaged citizenry with a belief that people, all people, have agency and power.

That is what those who engaged in the two very different issues dealt with in our case studies - the right of same-sex couples to marry and the right of people to live in a society free of the fear of guns - believed. They also took the position that, in a democracy, rights can be won within the system and do not require that the system itself be violently overturned, although it may well be successfully challenged. This was very different from the struggles against apartheid and from the position that some social movements would take, even within a democracy. At their core was the belief in the value of engagement and a concern to develop strategies of engagement, with all levels of society as well as the state, that would result in concessions being won and the lives of people being improved.⁴

² Paragraph 9 (3) of the Constitution.

³ Paragraph 12 (c) of the Constitution.

⁴ One of the best-known campaigns in South Africa that takes this position is the Treatment Action Campaign (TAC), which is organised around the issue of access to treatment for HIV/Aids.

II. The issues



In this document, we have chosen to focus on two particular advocacy stories because they exemplify so many of the learnings around advocacy in post-apartheid South Africa and because, in both cases, the activists involved have spent some time reflecting on what those learnings are.

On the face of it, these were two very different campaigns. In the case of GFSA, those involved were waging a campaign that was underpinned by a general consensus in society that people had the right to personal security, even if there were differences of opinion on how best this could be

Gun Free South Africa (GFSA)

A nation without guns? by Adèle Kirsten tells the story of how GFSA, a small NGO with limited resources, mobilised to reduce the number of guns in circulation in South Africa. The campaign contributed considerably to the rewriting of legislation regarding firearms control in South Africa, resulting finally in the Firearms Control Act of 2000. The context in which this took place was one of sometimes extreme hostility. South Africa was, and probably still is, a country in which gun ownership and use are seen by many as a right and necessity.

Historically, guns were used by colonialists to subjugate the indigenous people and then to colonise vast tracts of land to the north. In the apartheid era, licensed firearms were seen as the prerogative of whites and the majority of licensed weapons are still in the hands of whites. But as the struggle for liberation intensified, more and more unlicensed firearms found their way into the country.

For many of South Africa's black youth, the AK-47 was a symbol of liberation. Once the apartheid era ended, weapons previously used for political ends were increasingly used for criminal purposes. The percentage of people killed with firearms in South Africa between 1994 and 2000 increased. There are estimates that as many as 500 000 to several million illegal guns are in circulation in South Africa. By 1994, violence was an accepted part of

“normal” South African life.

There was, however, a small group of largely former anti-apartheid activists who were resolved that guns should have no place in the new democratic order. They were committed to non-violence as a means of bringing about social change, a commitment rooted in their understanding of how blood-soaked the soil of South Africa was. Together they formed GFSA which was to spearhead the struggle to bring about greater gun control in a country where a hardcore group of pro-gun activists believed it was their right to carry arms and, if necessary, to kill.

Violence permeated every aspect of South African life, nowhere more so than in the privacy of homes, where high levels of civilian firearm ownership translated into frightening levels of domestic murders. In South Africa, a woman is murdered by her intimate partner on an average of one every six hours, often by gun. Most of the weapons used in these intimate partner murders are legally owned. GFSA was founded on a belief that reducing and preventing gun violence requires “a robust civil-society movement that both assists the state in its efforts to reduce the demand for guns and holds government accountable to its promise to keep citizens safe and free from the fear of gun violence”. (Page 9)



ANC President Jacob rallies supporters by invoking a resistance song *Mshini Wami* (bring me my machine gun) even though the armed struggle ceased in 1990. The appeal of militarism remains a feature of South African political culture, in spite of the devastating impact of weapons on society

Photographs: The Times

The campaign for same-sex marriage

To have and to hold, edited by Melanie Judge, Anthony Manion and Shaun de Waal, is the story of the “making of same-sex marriage in South Africa”. The book deals extensively with many aspects of same-sex marriage, although this document draws most particularly on the chapter, “Lobbying for same-sex marriage: An activist’s reflections”, written by Fikile Vilakazi. Unlike the gun free campaign which, in a sense, put an interpretation of the right to freedom of security for the person on the agenda, the same-sex marriage campaign was part of a long-term strategy that placed itself on the agenda the moment the Bill of Rights included sexual orientation as a basis for freedom from discrimination.

It was a carefully thought through strategy that ensured that sexual orientation would be included in Paragraph 9 of the Constitution. Thereafter, an incremental strategy led to various laws that discriminated against people on the grounds of sexual orientation being repealed or changed. The legislation around same-sex marriage was a progression or “logical next step” of this strategy. The actual campaign around the Civil Union Bill was carried out by a particular alliance of organisations from the lesbian, gay, bisexual, transgender and intersex (LGBTI) sector. The campaign took place once the Constitutional Court ruled that parliament had 12 months from the end of 2005 to correct the defects in the common-law definition of marriage and the existing legislated marriage

formula. Failing this the court would automatically order the relevant section of the Marriage Act to be altered to allow for same-sex marriages. As they stood, the Marriage Act of 1961 and the common-law definition of marriage excluded same-sex couples from marrying. The campaign built on the incremental litigation strategy had resulted in the Constitutional Court ruling.

In August 2006, the Department of Home Affairs released the first draft of the Civil Union Bill, which sought to establish a new, “separate but equal”, civil partnership for same-sex couples only. It was in order to influence this bill that the campaign was waged. The bill, in addition to being unacceptable to the human rights community in its initial form, unleashed an unprecedented, visible homophobic response. The campaign addressed both these issues. It was not about fighting for marriage as an institution rooted in a patriarchal paradigm, something which was not considered necessarily desirable by many in the sector. It was about securing equality, dignity and freedom for LGBTI people who wished to marry and had been legally denied the right to do so, the right to choose to stand before an assembly of friends and family to declare their love and commitment and to enjoy the legal consequences flowing from the formalisation of this declaration. In the event, the outcome of this campaign would have the potential to have profound consequences for family law in South Africa.



A key component of the GFSA campaign was to get businesses, NPOs and government offices to declare their premises gun-free, in which people did not carry weapons.

Photograph: GFSA



secured. The issue at the core of the campaign - violence - was something that affected all South Africans. In the case of same-sex marriage, there was considerable disagreement about the right of gay people to marry or even to have any form of legally sanctioned union. The right was, at least superficially, something that affected a relatively small proportion of South Africans. It required a certain degree of sophistication to extend that to an understanding of the issue as encompassing the indivisibility of human rights. Yet there were a number of similarities and the campaigns produced many shared learnings that are useful in informing all civil society advocacy work in constitutional democracies. Among the similarities were:

- They were underpinned by rights conferred by the Constitution;
- They were rights that needed to be confirmed in some way by legislation;
- The campaigns were waged by civil society activists;
- The campaigns required that alliances be formed;
- Both campaigns had to deal with public hearings; and
- Both were largely but not completely successful.



Above left: The certificate issued by the Department of Home Affairs which legitimizes civil unions and confers on same-sex couples identical rights as heterosexual spouses.

Below left: The advent of the Civil Union Act, in 2006, received a great deal of media coverage.

Photographs: Gay and Lesbian Memory in Action

III. Putting together a framework for advocacy

Marcus and Budlender, paragraph 31.2, quote a study that looked at the growth of civil rights in the United States, Britain and Canada:

“The basic lesson ... is that rights are not gifts: they are won through concerted collective action arising from both a vibrant civil society and public subsidy. Rights revolutions originate in pressure from below in civil society, not leadership from above.”

It is probably fair to say, both in development work and in human rights work, that there is no one best way in which to do things. Some ways are better than others and some general lessons can be drawn about what seem to be good practices and those most likely to succeed in most circumstances. In this section, then, we try to draw some lessons about what combination of strategies seems to have been most effective in helping to advance social change and in pushing the bounds of the fairly limited understanding of human rights which most people hold. While we draw on our two case studies for examples and learnings, we are also indebted to Gilbert Marcus and Steven Budlender for their strategic evaluation of public interest litigation in South Africa, in which they look very usefully at key strategies for social mobilisation and factors for ensuring that public litigation succeeds and achieves maximum social impact. Although their emphasis is on public litigation, many of the lessons they draw from their study of specific cases apply equally well to social advocacy in general.

It is useful to look at a table of the key steps mentioned in all three publications as being necessary in strategising for social change. Despite the difference in issues and, in the case of public interest litigation, the focus on a particular strategy, the overlap is considerable.



Same-sex marriage	Gun Free South Africa	In support of public interest litigation
Strategising, often using litigation, to arrive at the specific issue of same-sex marriage	Identifying the problem and strategising about how to address different aspects of it	A public information campaign that informs people of their rights
Mobilising lesbian and gay constituencies to support the campaign	Defining goals – asking the “W” questions: why you want the change, what you want to change, who is primarily responsible for bringing about the change, and by when	Providing advice and assistance to people so they can claim, or strategise to claim their rights
Building strategic partnerships with other human rights organisations in support of the campaign	Understanding the environment and context – including the current political climate and social climate as well as more specific issues such as the level of opposition or support for your goal	Making use of social mobilisation and advocacy to ensure that communities are actively involved in asserting rights inside and outside the legal environment
Working with the media to reflect the positions of the LGBTI sector on marriage	Understanding government, which includes talking to government officials and public representatives, and understanding the law-making process	Public interest litigation – as a possible but not always necessary step
Preparing submissions	Developing solutions – it is easier to persuade others when you can suggest solutions that are practical and simple	For public interest litigation to succeed clients need to be properly organised and it is best if they are legitimate, credible organisations rather than individuals
Direct lobbying of parliament and key political individuals and structures	Collecting information – when you are trying to influence public policy you need to be able to show that you understand the issues and have done research on them	Public interest litigation is most successful when it is part of a long-term strategy rather than a “one shot” effort
	Building alliances	Public interest litigation is most likely to succeed when there is co-ordination and information sharing between interested parties
	Lobbying	The timing of public interest litigation is crucial
	Media advocacy	Public interest litigation needs to be backed by legal research and by factual research around the socio-economic issues involved
		The characterisation of the case (eg: can it be interpreted as “racist” or “elitist”?) and how it is portrayed by the media are important in public interest litigation
		Follow-up – what happens after the litigation, how raised awareness and a mobilised community or public continue to apply pressure for social change is a key factor in assessing the success of public litigation

“With the help of (such) targeted grantmaking for advocacy to raise the voice of the LGBT community, same-sex marriage in South Africa is now legal – a tangible return on the foundation’s investment in advocacy.”

Gerald Kraak of The Atlantic Philanthropies office in South Africa, quoted in Why supporting advocacy makes sense for foundations

The order and emphasis may be different, but the summation of the learnings about what is important in successful advocacy is very similar. We have used this overlap as a basis for grouping like factors to provide a framework within which to discuss the examples of the gun free advocacy initiative and the same-sex marriage initiative.

One additional factor needs to be mentioned and, indeed, is dealt with by both Marcus and Budlender, and Kirsten: funding for advocacy work. The Atlantic Philanthropies has produced a special report *Why supporting advocacy makes sense for foundations* (2008). The organisation and implementation of an advocacy strategy requires funding, particularly when there is a need to bring poor communities on board as advocates for themselves. Persuading donors that advocacy work deserves their support is not always easy as results are not necessarily tangible or even directly attributable to donor input. Funding such work has overt political aspects, particularly if a major target of the advocacy is the state and state policy. Supporting advocacy also requires that donors be flexible and responsive so that organisations can take advantage of opportunities that present themselves. There is risk involved. Getting donors involved and willing to participate in advocacy work is one of the challenges of doing human rights and development advocacy.

Based on the above, and having in mind organisations planning to do advocacy work around human rights and development-based issues, aimed at bringing about change in government policy, we have categorised the steps in advocacy as follows:

- Clarification of the issue and defining the goals;
- Researching the issue and understanding the context;
- Building strategic partnerships;
- Mobilising specific constituencies and communities;
- Working with the media;
- Lobbying;
- Working through the parliamentary process; and
- The struggle continues.

Each of these is discussed below with specific reference to our case studies. The categorisation is not intended to prescribe an order, as when things happen will often depend on the specific context. Timing, as Marcus and Budlender stress (paragraph 261)⁵, is very important. It involves both seizing opportunities when they occur and planning carefully to time actions for the maximum impact. Jonathan Berger in *To have and to hold* (Getting to the Constitutional Court on time: A litigation history of same-sex marriage, page 17), for example, quotes the careful strategy of public litigation pursued by the National Coalition for Gay and Lesbian Equality (NCGLE) and the Lesbian and Gay Equality Project (LGEP) in building up jurisprudence to support same-sex marriages before tackling what he calls “the grand prize – the right to choose whether or not to enter into marriage with another person of the same sex”.

⁵ Marcus and Budlender are referring specifically to the timing of the use of public interest litigation, but it applies more broadly to advocacy as well.



GFSA: The defining moment

Kirsten describes how gun-free activists made use of the momentum of the 1994 elections and of the symbolism of December 16 - traditionally called the Day of the Covenant - which has been used to commemorate the Boers' defeat of the Zulu armies at Blood River in 1848 and was the day on which Umkhonto we Sizwe (MK), the armed wing of the African National Congress (ANC), was formed in 1961. In 1994, after the elections, it was renamed the Day of Reconciliation. The gun-free activists used the opportunity to "frame the defining moment" in the form of a weapons hand-in day. Kirsten sees this "as the beginning of the struggle for freedom from the fear of gun violence". Although relatively few guns were handed in on the actual day, it seems to have had enormous symbolic significance. Then Minister of Safety and Security Sydney Mufamadi responded to the call for a gun-free South Africa by declaring a 24-hour amnesty for the day, conducted on a no-questions-asked basis for anyone handing in a weapon. The day was filled with drama and pathos. In one instance, for example, two rival gangs agreed to come to the hand-in point at the same time to hand over their guns. The hand-in had provided a catalyst for discussions between rival gangs.

It gave courage to a woman who had been living in fear of her husband's threats to shoot her; she took his gun and handed it in and then phoned one of the campaign centres to say, "Today, I'm free, thank you, I'm free." The South African Police Service co-operated, establishing a basis for future engagement. The campaign also affected children, many of whom called to ask if they could hand in their toy guns which, Kirsten says, "sowed the seeds for ongoing projects on toy guns", including making schools gun-free zones. The activities with children had not been anticipated or planned but GFSA seized the opportunity and was able to respond creatively and rapidly and to use the opportunities for maximum media coverage. In fact, the event got extensive and positive media coverage. It put the issue of gun violence on the national agenda and presented one possible way of dealing with the proliferation of guns in the country: the idea of a time-limited amnesty. It was also valuable experience for the gun-free activists involved, coming as it did at the beginning of a long campaign to reduce gun violence in the country. (Page 20 and ff)



Wedding regalia. A participant at Johannesburg Pride, October 2007

Photograph: Nadine Hutton

IV. Clarification of issues and defining the goals

“The current common law definition of marriage ... suggests not only that their (gays’ and lesbians’) relationships and commitments and loving bonds are inferior, but that they themselves can never fully be part of the community of moral equals that the Constitution promises to create for all.”

(Quoted from the majority Supreme Court of Appeal judgment in the case of Fourie and Another v Minister of Home Affairs and Others, 2004, Justice Edwin Cameron.) The case, thereafter, went to the Constitutional Court.

⁶The National Coalition for Gay and Lesbian Equality (NCGLE) did the initial groundwork, first on getting sexual orientation included in paragraph nine of the Constitution, and then on the initial litigation challenges. It was succeeded by the Lesbian and Gay Equality Project (LGEP). The LGEP’s operations were suspended because of internal problems in 2005. From then on, OUT, an LGBT organisation based in Tshwane, together with the Joint Working Group (JWG), a national network of collaborating LGBTI organisations, provided the leadership in the same-sex marriage campaign.

⁷Melanie Judge in an interview at the time of the writing of this publication.

From the beginning, gay and lesbian organisations saw the issue of same-sex marriage as a necessary consequence of the inclusion of sexual orientation in Paragraph 9 of the Constitution.

The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

Paragraph 9 of the Constitution

The activists involved⁶ believed, however, that before this could happen, other legislation needed to be amended or changed and issues such as the criminalisation of sodomy needed to be addressed. They saw themselves as doing the groundwork that would build a foundation for making a final argument for same-sex marriage. They engaged with gay and lesbian communities, asking them whether or not they wanted marriage (which they did) and, more formally, with the South African Law Reform Commission’s review of domestic partnerships and marriage. Thus, while a number of gays and lesbians had some doubts about the institution of marriage and the way in which it played itself out in many heterosexual relationships, there was consensus that individuals should have the choice about whether to marry or not and that, without this choice, their freedom, equality and dignity would be impaired.



Hands off women! One of the provisions of the Firearms Control Act is that anyone who has been convicted of domestic violence may not be issued with a certificate of competency to own a weapon. In South Africa, which has very high levels of gender-related violence, a woman dies violently at the hands of her partner, every six hours.

Photograph: GFSA

It was a very specific goal and its achievement would be tangible and measurable. Perhaps because of this, the sector does not seem to have looked beyond the immediate campaign around getting the necessary legislation accepted. Thus far, there has not been much that has built on that success and there is not yet an answer to the question posed by Marcus and Budlender (paragraph 278 and following): What happens after the litigation (or, in this case, the legislation), how is awareness raised and how does the community or public continue to apply pressure for social change? One of the activists involved⁷ says the outcome should not just have been the legislation, but also about “voice”.

The GFSA clarification of what it was trying to achieve in its advocacy campaign included two clear strands: advocating for a new policy to strengthen gun laws and enabling grassroots communities to have agency, a sense of their own power, in bringing about change and influencing their environment. It had a specific goal to integrate education for active citizenship into human rights advocacy. For GFSA, the first step is “naming the problem and creating public awareness about the issue” and then identifying the strategic objectives that the advocacy campaign wants to achieve. Here is where it asked what Kirsten calls “the W questions”: why you want the change,

“There were activists at the time of the writing of the Constitution who were very clear about what they wanted. The first step – get sexual orientation in the Constitution. When you have that, decriminalise homosexual conduct and, after that, challenge the state on issues that will not cost the state much money – medical aid, pensions and immigration. These are also issues that are not necessarily that controversial. Over a period of 10 years it built up the jurisprudence that we relied on when we litigated for same-sex marriage. And, if at the end, we did not get marriage, we would still have something else.”

Wendy Isaack in To have and to hold (A space to challenge the norms) (page 44)



Mass demonstration outside Parliament, Cape Town, 2007 - against violence against women. On-the-ground organisation and mobilisation are a key ingredient of successful advocacy campaigns to ensure that new policies, legislation and outcomes of litigation are implemented.

Photograph: Paul Hofman

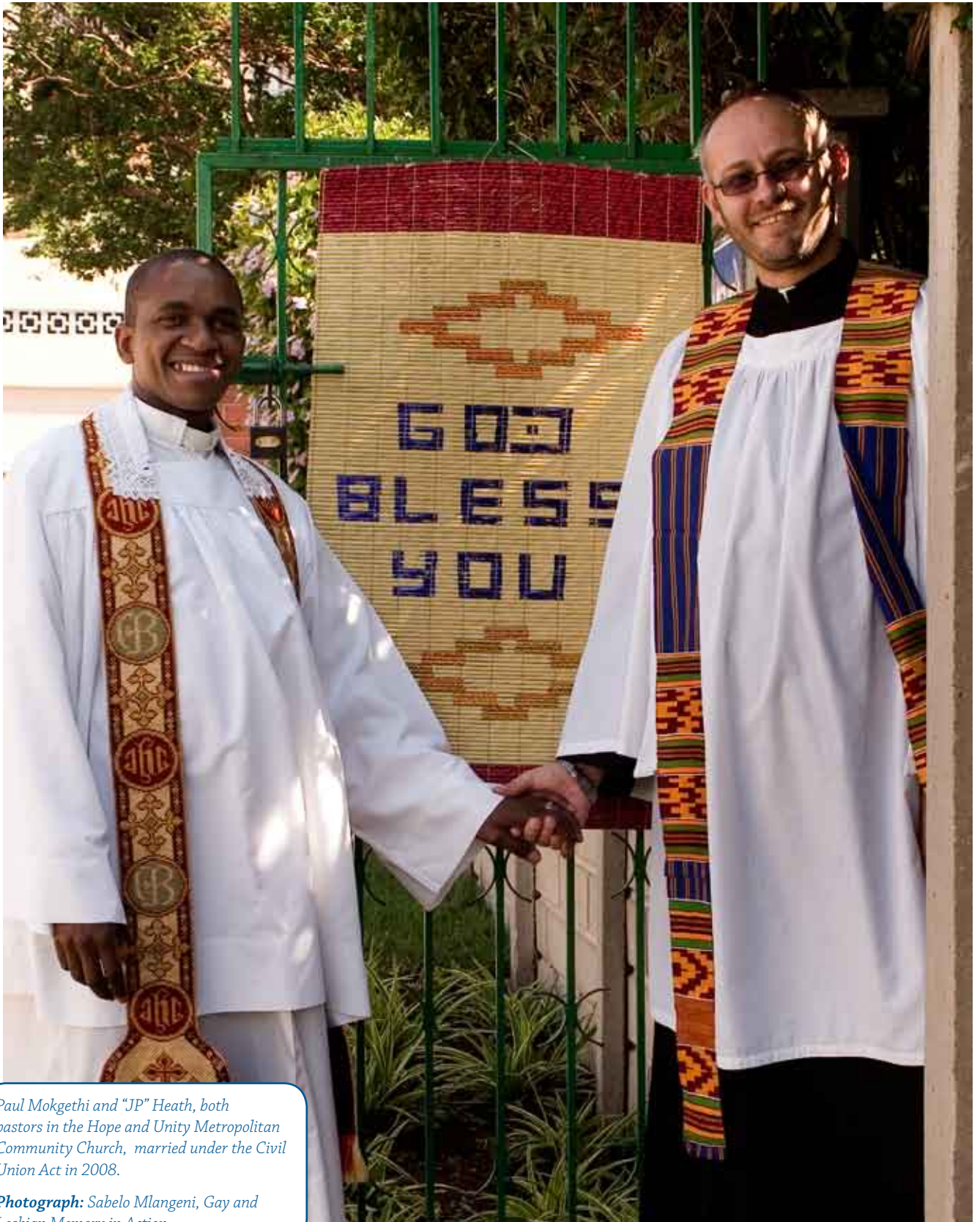
what you want to change, who is primarily responsible for bringing about the change, and by when.

She points out that it is possible to have a short-term goal (in this case it was campaigning for, and getting, stricter gun laws) which contributes to a long-term strategic objective (for GFSA, achieving a gun-free South Africa). Within these very clear objectives, there were also clear sub-agendas: from the beginning, GFSA was concerned about creating a new culture and establishing new norms of behaviour; and, for it, advocacy was about changing specific decisions affecting people's lives and also about changing the way decision-making happens into a more inclusive and democratic process. This understanding of advocacy was to have a profound affect on how it waged its campaign.

“The strength of this application of the concept of advocacy is that it enables people to experience influencing environment at all levels: from the minutiae of daily living and their immediate environment to the big picture of changing laws which govern the way they live.

Thus the GFSA views advocacy as the ability to change things at different levels, from personal to political, from local to national. Advocacy is also aimed at several diverse stakeholders both inside and outside government and has a strong mobilising component.”

From A nation without guns? (page 204)



Paul Mokgethi and "JP" Heath, both pastors in the Hope and Unity Metropolitan Community Church, married under the Civil Union Act in 2008.

Photograph: *Sabelo Mlangeni, Gay and Lesbian Memory in Action*

V. Researching the issue and understanding the context

Wendy Isaack describes how,

“We (LGEP) were doing this work very carefully and slowly. For four years, I had a big file of couples who’d come in for partnership contracts. For the marriage case, we were looking for couples who would represent the diversity of the country – white, black, Indian, coloured, poor, rich.”

From To have and to hold (A space to challenge the norms) (page 45)

The Lesbian and Gay Equality Project (LGEP) had been gathering information and evidence to underpin its advocacy for same-sex marriage for years. A series of High and Constitutional Courts judgments had served to repeal or reform a range of laws that had previously discriminated against gay and lesbian people. The judgments were a result of legal challenges brought by the National Coalition for Gay and Lesbian Equality and its successor, the LGEP, as well as by independent lesbian and gay couples and/or individuals. In keeping with the equality clause, parliament had passed legislation to prevent discrimination in a range of areas, with specific references to the rights of gays and lesbians. The Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 also requires the government to “promote equality” on all grounds in the equality clause of the Constitution.

According to Wendy Isaack in *To have and to hold*, the actual same-sex marriage litigation and advocacy work had started two years before the Equality Project filed papers in the High Court, with public education in all but three of the provinces with the gay and lesbian community and with the more formal involvement in the South African Law Reform Commission’s review of domestic partnerships and marriage. The Equality Project made submissions on the discussion paper produced by the Commission, and attended public workshops and hearings, making inputs. It also got evidence by taking same-sex couples to court to get married where they were refused permission because the system would not accept two same-sex IDs. In mid-2004, the Equality Project acted on the need for the common law and the Marriage Act itself to be challenged and launched an application in the Johannesburg High Court.

It was joined in this application by a number of organisations from the sector and six same-sex couples. At the same time, a lesbian couple, Marié Adriaana Fourie and Cecelia Johanna Bonthuys, were taking their desire to marry through various judicial levels and, in 2004, the LGEP intervened as *amicus curiae* in this case. The Constitutional Court heard the Fourie case and the Equality Project’s direct application together, resulting in the instruction to

⁸ Marié died before the legislature passed the Civil Union Act and she and Cecelia were never able to marry “officially”.

March highlights lesbian's killing

LEANNE RAYMOND

THE brutal murder of a young lesbian woman in Khayelitsha two weeks ago took centre stage as 150 Gay Pride supporters strutted their stuff through the streets of Gugulethu yesterday, in the first Gay Pride march to take place in a township.

Organiser of the event Ronnie Ngalo said the murder of Zoliswa Nkonyana, 19, showed the importance of events that increased the awareness of gays and lesbians in the townships.

"People believe to be gay is un-African, (but) that is discrimination against us," said Ngalo.

He said gays and lesbians were here to stay and people should support and protect them.

Police spokesman, Elliot Sinyangana, said Nkonyana was "stabbed and stoned to death by a mob of young people on February 4". Police were still investigating the reason for her murder, said Sinyangana, and no one has been arrested.

"It is difficult because the people involved are not known in that area," said Sinyangana.

Nkonyana was a member of a lesbian soccer club, the Wini Club.

According to a Sunday newspaper report, she was with a 17-year-old lesbian friend when another woman began taunting them, saying they "wanted to get raped".

They told the woman they were lesbians and to leave them alone. The woman then fetched "about 20 powanish guys" who began beating them, said Nkonyana's friend, who was too



OUT AND ABOUT: Tami Siyo, 21, dances through the streets of Gugulethu during yesterday's first Gay Pride march to take place in the township. Picture: ALAN TAYLOR

towards her house but the mob threw bricks at her until she was lying on the ground.

"But they just carried on," her friend said.

At yesterday's march, a brass band played as the group of dancing people followed Ngalo who was waving the gay pride

representative and traditional Xhosa women marched along in support of the campaign.

Russell Southey, Pride festival director, said Nkonyana's murder highlighted the high level of homophobia in black communities.

"Hopefully marches like this

into society and protected. But in black communities the gay pride cause is extremely relevant. Gay people in black communities need to know they are not alone. Nkonyana was killed in sight of her family, imagine living with that threat."

Southey said the three other

ous homophobic murder, two people pictured with the victim in the newspaper were raped.

"One has died of AIDS," he said. Bulelwa Panda, an organiser, said she was excited about the march, although the turnout was not very good. As they marched past a

“... lesbian and gay people were a political minority that would not, on its own, be able to influence the parliamentary process politically in such a way that would result in successful law reform. Hence the organised lesbian and gay sector, as represented by the JWG, needed to mobilise itself and develop a political strategy enabling the sector to build a legitimate and strong political voice for the parliamentary same-sex marriage campaign at that time.”

Fikile Vilakazi in To have and to hold (Lobbying for same-sex marriage: An activist's reflections) (page 89)

the legislature to get its house in order.⁸

The suspension of the Equality Project in 2006 due to funding constraints happened, however, at a crucial time and it could be argued that when the Constitutional Court gave its ruling on December 1, 2005, the LGBTI sector took its eye off the ball for a while. There were some within the sector who thought the best thing was to leave the matter alone, let time take its course and, with nothing done by December 1, 2006, the Marriage Act would then be automatically changed to include provision for same-sex marriages to comply with the Court order.

Others were less optimistic and, as it turned out, correct. They believed that the conservative, religious right-wing would mobilise to prevent this from happening. In the event, the Department of Home Affairs published the draft Bill in August 2006 and it was then that the sector went into full advocacy mode. While the Joint Working Group (JWG) - a loose coalition of LGBTI organisations - agreed that the marriage campaign was a shared national priority, it did not have the resources to co-ordinate the campaign on its own. Consequently the Pretoria based service group, OUT LGBT Wellbeing (OUT) took responsibility for leading the campaign in collaboration with the JWG. OUT was never one of the organisations that thought the problem would sort itself out if left alone. It had employed an advocacy officer, Fikile Vilakazi, from January 2006 with the express intention of her being directly involved in the same-sex marriage campaign. She was fully aware that, given the "high level of bigotry and antagonism that had risen against same-sex marriage", and the engagement of political parties, faith-based and traditional institutions, as well as influential individuals with strong opinions, the LGBTI community had a fight on its hands. This element of understanding "the enemy", and one's own limitations in the context, is a crucial part of understanding the environment in which an advocacy campaign will be waged.

GFSA understood that gathering information and being able to demonstrate an understanding of the nature and extent of the problem, as well as being able to offer some simple and easy solutions, based on local and international research, were essential steps in being able to change public



Despite significant constitutional advances which have secured many human rights for gays and lesbians, public attitudes lag behind legislative change and homophobia remains deeply rooted in South African society. Here para-medics are called to attend to injured people, after lesbians were pelted with bottles, by onlookers at the Johannesburg Pride Parade in October 2006.

Photograph: *Gay and Lesbian Memory in Action*

“One of the most important findings of the research was that crime victims in possession of a firearm at the time of an attack were four times as likely to have their firearm stolen as to be able to use it in self-defence. This statistic has remained one of the most powerful pieces of information in the gun-control debate in South Africa, particularly in the struggle to convince potential and current gun owners that owning a gun, far from being an effective means of self-defence, actually puts them at greater risk.”

From A nation without guns? (page 84)

policy. The organisation saw facts and figures as crucial to its campaign, as well as the need to take existing research and develop concise briefings that would make its knowledge widely available to a range of policy and opinion makers. The campaign employed a research co-ordinator and commissioned research, addressing some of the most pressing questions on the use and abuse of guns, and identifying possible intervention strategies, including stricter gun laws. It reviewed existing firearms legislation and identified key areas that required reform, using international comparisons. Unlike the instance of same-sex marriage where the campaign was presented with already drafted legislation, GFSA, as part of its advocacy role, played a role in giving input into the development of the legislation, presenting a memorandum to the Minister of Safety and Security as early as 1996, four years before the legislation was actually passed. The research received excellent media coverage and “played a critical role in building the GFSA’s profile as a serious role-player in the safety and security arena, with a particular interest and expertise in firearms control”. It was this systematic collection of data that enabled GFSA to include a public-health dimension to its approach and to partner with health professionals around this.

GFSA also knew it was important to understand the broader context in which the campaign would be run, including the current political and social climate, as well as the more specific context, such as the level of support and opposition for one’s goal. Factors such as the attitude of the government to the campaign, an understanding of how government works and to whom you need to talk are all important in influencing public policy.

The campaign started early in the period of post-liberation. Civil society and the government were still working out how to relate to each other, which presented both challenges and opportunities. In this advocacy campaign, the presence of the gun lobby as a chief adversary within civil society was a significant factor. Seasoned activists had to learn to deal with the tactics used by the lobby, including attempting to personalise issues and sometimes providing blatant misinformation. The interests of the gun lobby were represented by the South African Gun Owners’ Association (SAGA). In addition



A society free of guns remains an elusive goal, especially as weapons are glamourised in some parts of youth culture; illegal gun ownership by members of youth gangs, especially in some of South Africa's urban areas, remains a problem and a source of violence.

Photograph: Nina Berman

to the official responses from SAGA, GFSa also had to deal with threats and harassment by telephone, through hate mail and sometimes via email. The source of this was white, male gun owners, venting their anger, often in obscene language, on a visible target – GFSa staff members. There were also instances of vandalism. Staff members developed their own ways of dealing with this but the fact that GFSa understood the environment in which it was working and the attitudes and positions of both those who resisted it and those who were potential allies provided a basis for how it did this.

“... although the roots of the new government lay in the liberation and anti-apartheid movements, there were a significant number of people in the civil service who had served under the apartheid government, and so the issue of stricter gun control was contested within government departments, just as it was contested elsewhere.”

From A nation without guns? (page 117)



VI. Building strategic partnerships

Kirsten calls this “building alliances” and describes it as follows: “... alliances are formed through civil society partnerships as part of building broad-based political and community-based support in pursuit of a common goal”.

The campaign for same-sex marriage: Working with human-rights organisations

The gay and lesbian activists working on the same-sex marriage campaign understood that there was a need to link the campaign to broader issues of social and legal justice in South Africa. The principle underpinning the strategy was to work within a human rights framework. This was not just a call for lesbian and gay people to enter the institution of marriage, but a call to advance equality, freedom and dignity for all people. This was certainly not a “taken for granted” understanding, as the public hearings were to show. It was essential for the campaign to lobby other human rights organisations for their active involvement in it. According to Fikile Vilakazi, this meant that the OUT/JWG alliance had “a responsibility to ensure that the public, parliament and the judiciary viewed the campaign in the same light”, and this required lobbying strong human rights voices and institutions responsible for holding parliament accountable for the implementation of constitutional rights. In the parliamentary process, written submissions and oral argument which favoured same-sex marriages (although not necessarily the initial or even final formulation of the bill) that came from outside the JWG included those from the Women’s Legal Centre, the Centre for Applied Legal Studies (CALS), the South African Pagan Rights Association, the South African Council of Churches (SACC), the African National Congress (ANC), the Democratic Alliance (DA) and the Independent Democrats. The campaign engaged with the South African Human Rights Commission, the South African Commission for Gender Equality, CALS, the Women’s Legal Centre, the SACC and many others. It encouraged those organisations to take a formal position on same-sex marriage, to make submissions to parliament and to support the campaign actively. OUT had already developed a relationship with people from the SACC before the campaign and built on this, and there were also a number of churches that specifically served the LGBT community.

In the campaign, there were clearly a number of Christian voices saying “not in my name” about discrimination against homosexuals. These were not only lesbian and gay churches but mainstream church voices that spoke out and made a powerful contribution.

This broad spectrum of support was sometimes forgotten in the face of many negative submissions and, in the hearings, in a barrage of homophobic input from those opposed to the whole notion of same-sex marriage. In making a verbal submission to the National Assembly, Ms S V Kaylan of the DA congratulated the gay and lesbian groups “for standing their ground, often in the face of strong opposition, mockery and sarcasm ... As a nation, we have a long way to go to eradicate discrimination on the grounds of sexual orientation. Some members of the DA are opposed in principle to the bill as they are of the opinion that [it] fails in terms of the equality clause of the Bill of Rights. The DA will allow a conscience and free vote on the bill.”

The ANC did not allow a free vote and insisted that “the implementation of organisational programmes, which have been mandated by the vast majority of South Africans” cannot “be made contingent on the whims of individuals”. The point that was made by the campaign, and heard by some but not by many, was that the issue was a constitutional one and not a traditional or religious one. That anyone heard this was a tribute to the lesbian and gay community, which held its ground, noting that these objections “miss the point. What is at stake is not a limitation of religion or a dilution of the exclusive right of heterosexuals to marry. What is at stake is far more important: it is about the inclusion of all people under a single legislative framework, the design of which was laid out by our Constitution.” (From the JWG verbal submission)



“The Gun Control Charter ... focused on two key aspects of [the] proposed gun-control legislation: the strict screening of potential licence holders and increased control over those who own guns.”

From A nation without guns? (page 68)

Kirsten notes in *A nation without guns?* that forming an alliance has many advantages. It broadens your support base, pools resources and develops new leadership. It can also enhance the credibility of the group as a whole and of individual groups within the alliance. Overall, it helps you “achieve together what you may not have achieved alone”. (page 207) For GFSA, this alliance was formalised in the Gun Control Alliance (GCA) which developed, jointly, a Gun Control Charter, the purpose of which was to get as many people as possible to support an achievable short-term objective. The GCA was launched in early 1999 and accommodated a range of individual organisational views and beliefs. It had 450 organisational members, including national bodies such as the South African Council of Churches and the Gender Commission, as well as national and provincial NGOs and community-based groups from townships. It included health professionals such as those working at the Red Cross Children’s Hospital “who deal with the consequences of gun violence every day”. Through the GCA it was possible to harness “expert opinion” with that of the voice of the grassroots – “an expert opinion from another vantage point”.

VII. Mobilising specific constituencies and communities

“My feeling is that a political opportunity was lost here, in terms of locating and understanding the campaign as a fight for equality, dignity and freedom of lesbian and gay people within family law.”

Fikile Vilakazi in To have and to hold (Lobbying for same-sex marriage: An activist's reflections) (page 90)

The same-sex marriage campaign focused on mobilising lesbian and gay constituencies as well as on forming alliances with human rights organisations. The Equality Project had aimed to promote public education and advocacy on the merits of its strategic-litigation process. The intention was to ensure that lesbian and gay people and other human rights stakeholders throughout the country were aware of what the call for same-sex marriage was about. In 2004 and 2005, the Equality Project had conducted workshops with LGBTI people and organisations in a number of provinces. The purpose was to brief the sector about the legal developments of the same-sex marriage court cases and to ensure that lesbian and gay people were constantly visible during court hearings and could engage with the merits of the application and the legal process.

According to Vilakazi, many LGBTI people, outside the organised sector, had no interest in engaging with the political discourse on the issue – they just wanted to get married. The legal language and technicalities of the court's interpretation of the situation were also a challenge. As a result, only a small number of people, often academics and lawyers, dealt with the detail of the debate. Melanie Judge, one of the activists involved, believes⁹ that there were also limited voices to speak up because not enough effort had been put into developing activism in the townships. Nevertheless, once the debate moved to parliament, JWG affiliates mobilised lesbian and gay voices to ensure visibility and engagement during the public debates, identified couples to make submissions to parliament and prepared lesbian and gay people to respond to homophobic media articles and to participate in radio and television debates during the campaign. Activities included a march to the Union Buildings organised by Jewish Outlook in September 2006 and a picket in front of parliament organised by the Triangle Project during the stakeholder hearings in parliament. These demonstrations represented a coming together of a number of JWG organisations; there was also lots of messaging during Pride 2006.

GfSA was faced with a different challenge. It had no prescribed constituency but it did have a strategy which stressed the mobilisation

⁹Interview during the writing of this publication.



Although the Firearms Control Act has seen a sharp reduction in legal gun ownership and the number of arms in circulation, use of illegally owned guns is a disturbing feature of South Africa's high crime levels. It sets in motion a vicious spiral where ordinary citizens hire armed private security guards to protect their homes, many policemen and women are killed in the line of duty and the level of armed violence remains high, despite the advances of the GFSA campaign.

Photograph: Helen Macdonald

of grassroots voices against guns, in tandem with the policy process. The “gun-free-zone campaign” turned out to be a significant tool in realising this strategy. A gun-free zone is a space where firearms and ammunition are not welcome. The zone is denoted by signs showing a crossed-out gun with the inscription, “This is a gun-free zone”. Originated by GFSA, this campaign is now used in other countries. The campaign had two main objectives: to create spaces in which people felt safe and, more long-term, to change public attitudes about guns by challenging the notion that guns bring security, and so helping to reduce the demand for them. The gun-free-zone campaign gave people the opportunity to do something practical and, according to Kirsten, it “was one of the cornerstones of building the GFSA into an organisation and a movement”.

In *A nation without guns?* she illustrates this through the story of Mapela, a small town in the then Northern Province (now Limpopo).

“The budget for the same-sex marriage campaign was extremely limited, and this was a challenge when it came to working with lesbian and gay people within communities. The majority of such people were left out of the process because of the lack of affordable transport to spaces where LGBTI voices were needed during the campaign.”

Fikile Vilakazi in To have and to hold (Lobbying for same-sex marriage: An activist's reflections) (page 90)

The story of Mapela and GFSA (page 48 ff)

In 1996, GFSA put an advertisement in *The Star*, a Johannesburg daily newspaper, inviting communities to approach the organisation if they wished to set-up a gun-free zone in their areas. Samuel Kobela, a community leader from Mapela in Limpopo Province, phoned the GFSA office in Johannesburg. He was already one of many who had requested gun-free zone materials and he had set up a volunteer committee to help him get the campaign off the ground in his community. He told GFSA that the residents of Mapela felt it was time for someone from GFSA to come to their community and run a workshop so that the campaign could get under way. Two GFSA staff members drove north to Mapela in early December 1996 in a car packed with GFSA materials and copies of the workshop manual. Mapela is a cluster of 21 villages about 35 kilometres northwest of Mokopane (then Potgietersrus), in the poor rural district of Mahwelereng. It has a population of approximately 40 000 and is governed by a democratically elected local government councillor and a tribal authority. When the GFSA contingent arrived, the committee was waiting for them under the trees at Wilhelmina's restaurant, abuzz with excitement because "some important people" had come all the way from Johannesburg to meet their project and listen to their plans.

This was an acknowledgement of what they had already done and an encouragement to do more. The workshop was formally opened by Queen Nkosinathi Langa, the head of the tribal authority, and a member of the Limpopo Provincial legislature. The mixed crowd of local residents, business people, organisational representatives, police officers, and town councillors were eager for information. They wanted to make their entire village a gun-free zone. The Mapela GFSA Committee was formally constituted, led by Kobela, an unemployed man with a commitment to pursuing non-violence as a means to creating a just society. After the initial workshop, the community took over and made the gun-free campaign a living reality in the area. The gun-free zone project in Mapela generated a great deal of public interest and was

picked up and profiled in national media. More than 10 years later, it remained a gun-free zone. This, as Kirsten points out, does not mean that no-one in Mapela owns firearms. It does mean that carrying and misuse of guns by the public has been limited. People report feeling safer in shebeens and a generation of children has been brought up understanding the dangers and limitations of firearms.

The model spread to other communities and Mapela has come to stand as an example of how a community can mobilise around small arms reduction efforts. GFSA had limited resources but it knew how to train activists to organise and mobilise around a common issue. Later, when the Firearms Control Bill was debated in parliament in 2000, GFSA brought Samuel Kobela to parliament, his first air flight, to speak before the Safety and Security Portfolio Committee on why the government needed to take tough measures to control guns, describing how his community had made it possible to live a gun-free existence. Encouraged and supported by GFSA, he spoke briefly but with considerable impact. He supported gun-free zones and proposed that the age for gun ownership be increased from 16 to 25, so as to exclude schoolchildren. For the GFSA colleagues and fellow activists who heard him, the moment was very emotional: here was the true meaning of participatory democracy; a small, seemingly insignificant village was leading the way. His presence, as part of the GFSA team, also reflected the growth of GFSA from a small, relatively elitist group into a truly representative movement. The two strands of the GFSA strategy - policy change and community involvement and agency - came together in the historic setting of Parliament. For Kirsten, going into a community with a piece of legislation, talking about the problems the community is having related to the issue the legislation is meant to address, summarising the key parts of the bill and "watching the lights go on as people get the connection between their experience and what they want to change and how the legislation addresses this" was one of the most exciting parts of the work of GFSA.

VIII. Working with the media

“We were quite vocal as an organisation. I was shouting from the rooftops about how the media was addressing the issue ... through these processes – our being angered, irritated, frustrated, and then tackling some of these issues and actively engaging with the media – I think they have become more sensitive.”

Glenn de Swardt of the Triangle Project in To have and to hold (Counting the gay faces) (page 112)

The homophobic outpourings in the public hearings on same-sex marriage were given extensive media coverage both nationally and internationally. According to Glenn de Swardt, writing in *To have and to hold*, in those days, the media had not “even started to come to terms with issues relating to sexual orientation or alternative sexual identities ... we were Flavour 42 that they just never got to”. He does, however, think that there has been a shift in the media as a result of the same-sex marriage process. Commenting on relations with the media during the campaign, Vilakazi says that “it was almost impossible to move the media debate towards a discussion of rights upheld and rights violated. The debate in the media degenerated to the point where lesbian and gay people had constantly to defend the fact that they were human and that their sexuality was as natural as heterosexuality. The opportunity for robust discussion on human rights was lost. There is a need to look at the role of the media in promoting democracy and human rights in Africa.” She notes, however, that, in view of the focus on the “unAfricanism” of homosexuality, it was strategic for the sector to ensure that the same-sex marriage campaign had “an African face”, putting her at the centre of dealing with the media responses and representation of an LGBTI voice during the campaign.

Not surprisingly, the experience of GFSA with the media was less harsh. While gun control may evoke emotional responses, it does not create the same level of hysteria that issues to do with homosexuality seem to, striking, as they do, at the very heart of what people cling to in their cultural, moral, and religious identity. Kirsten notes that a key aspect of successful advocacy is understanding how to use the media in all its forms to influence public opinion and social change. Arguably, GFSA had more space to manoeuvre on this than did the same-sex marriage campaign, but it appears to have used the space well and its experience is worth reflection.



Rifles for sale in a Johannesburg central city gunshop.

Photograph: Helen Macdonald

GFSA: Media advocacy and campaigning

The GFSA went about its media campaign systematically. It saw it as necessary to develop an overall media strategy. This involved identifying key messages, branding the GFSA logo, developing the GFSA's public image and creating materials to convey key messages to a variety of constituencies. The GFSA campaign was marked by creativity, and nowhere more so than in its media strategy. The organisation explored different ways to communicate its key messages, whether through journalists to the public, through pamphlets geared towards active members or potential supporters, or by using paid advertising in the media, such as print, radio and television advertisements. Early in its campaign, it formed a partnership with an advertising agency that took GFSA on as a "charity account". The result was a range of clever and hard-hitting advertisements, some of which created controversy but all of which were memorable. The agency also encouraged others in the industry to join in the partnership, which meant that almost all GFSA print adverts were flighted free of charge. Both the advertising agency and GFSA worked on the partnership. GFSA ensured that the agency was kept up-to-date with the latest information and issues by sending it a monthly resource pack with new research, statistics and news from the branches as well as international links. It recognised the value of the relationship and allocated time and resources to it. Agency staff members,

in turn, embraced the cause and were often proactive in responding to issues.

The GFSA had a clear media policy that designated who should speak on behalf of the organisation and on what issues. Where the audience was largely young and black, it was important to use a GFSA spokesperson who reflected the group, understood its aspirations and talked about the gun issue from its perspective (something which Vilakazi notes in talking about her role as the "face" of the same-sex marriage campaign). It also recognised the importance of having good relations with the media. This included respecting deadlines, always calling a journalist back as promised, seeing journalists as messengers rather than as friends or enemies, and understanding that, if it wanted coverage, it had to generate newsworthy stories. According to Kirsten, without being experts, the GFSA staff managed to combine two key elements of successful media advocacy: staff loved the excitement of needing to seek new angles and creative ways of getting the GFSA messages across, and the organisation was also methodical in its approach, particularly when dealing with the news media. Finally, successful media advocacy means "not losing sight of the big picture" – in this case it meant analysing and reflecting on the media strategy to ensure that it was helping the organisation reach its ultimate goal of a gun-free society. (See chapter seven of *A nation without guns?*)

IX. Lobbying

“Talking to government officials and public representatives is one of the most important steps in any advocacy campaign aimed at influencing public policy.”

*Adèle Kirsten in A nation without guns?
(page 206)*

Lobbying is the legitimate attempt by citizens to put pressure on the government and government representatives to listen to the voice of the people, using persuasion and information as tools.¹⁰ Because the process is two-way, lobbyists gather additional information from the interchange. Who you talk to when you are lobbying depends on your understanding of government and how it works. It is important to do some basic information gathering on what policies and legislation exist on the issue concerned and about the parliamentary process and to have a thorough knowledge of the piece of legislation under discussion.

Kirsten describes how GFSa never missed a day during the public hearings, monitoring the proceedings and providing parliamentarians with additional information during lunches and teas. Each evening it would do a debriefing in preparation for the next day and, as MPs came in each day, they were handed a written briefing for the day. The GFSa and the GCA had already established relationships with almost every member of the Safety and Security Portfolio Committee, whether pro or anti their cause. Where people clearly had views that diverged from those of the anti-gun groupings, the intention was to establish mutual respect rather than get them to alter their staunchly held views.

“This advance work facilitated the opportunity for ongoing dialogue and the ability to access MPs. The GFSa was a known entity that had shown its bona fides. By and large, the MPs trusted the GFSa – even those who had been suspicious at the outset, viewing the organisation as a bunch of radical, naïve utopians. Indeed, during the lobbying period before the bill was published, one of these MPs acknowledged in a one-on-one meeting that, after several months of receiving the regular MP briefings, he had actually read one ... and found it very reasonable and informative. Thereafter, he looked forward to receiving the GFSa’s material.”

Adèle Kirsten in A nation without guns? (page 134)

¹⁰It is also possible to lobby those outside the government and parliament to put pressure on the government and elected representatives by their actions and their words.



Same-sex marriage: Lobbying parliament and politicians

Vilakazi describes how the lesbian and gay sector identified the lobbying of lawmakers as critical to ensure that they bought into the JWG position. The aim was to identify possible allies and to build and develop these relationships in order to influence the outcome of the legislature’s deliberations on the legal remedy required by the Constitutional Court. Activities included one-on-one engagement with MPs (particularly from the ANC and Democratic Alliance, the chief opposition); sending letters; development and dissemination of fact sheets and other information to inform policy-making; active participation at provincial public hearings; and maintaining the constant visibility and presence of LGBTI voices throughout the parliamentary process. Key to the success of the same-sex marriage campaign was engagement with the ANC as the ruling party in the government and parliament. “This required that those who led the campaign understood the decision-making processes, political landscape and positioning of the ANC in relation to the campaign. This was a daunting task given the conservatism of some in the ANC when it came to understanding the interpretation of liberal democracy, the Bill of Rights and the Constitution itself.” (Vilakazi, page 92)

The campaign targeted strategic individuals within the ANC who were in influential leadership positions. Some of them were very supportive, suggesting that the JWG engage structures and individuals, such as the National Executive Committee (NEC) and the Minister of Home Affairs, parliamentary portfolio committees such as Home Affairs and Justice, and the two houses of parliament, the National Assembly and the National Council of Provinces

(NCOP). According to Vilakazi, the ANC itself did not embrace the idea warmly and there was a strong socially conservative element within the party. This might have had something to do with the way in which the public hearings were conducted. The only strategy that seemed to work was to target individual members of the NEC. The turning point was when the Minister of Home Affairs (then also on the NEC and the chairperson of the ANC Women’s League) called a closed-door meeting with specific stakeholders, including key LGBTI organisations. At this meeting, organisational representatives of the LGBTI sector explained to her that the issue was one of compromising the human rights of LGBTI people, rather than simply not allowing them to access the institution of marriage. It was, however, the Portfolio Committee on Home Affairs, not the ministry, that was responsible for engaging with the public, and which organised the public hearings in all provinces on the Civil Union Bill. At the public hearings, lesbian and gay activists were able to lobby and engage with members of the Portfolio Committee on Home Affairs. While this may have affected the individual members, it did not affect the hearings themselves. They “degenerated into spaces and platforms for hate and homophobia”. (Vilakazi, page 94) Where there were voices among the parliamentarians in favour of same-sex marriage, one of the reasons they gave was their personal experience with gay people during the liberation struggle. (So, for example, Mosiuoa Lekota, who was the Minister of Defence at the time, had been an accused with well-known gay activist Simon Nkoli at the famous Delmas Treason Trial and came out strongly in favour of same-sex marriage.)

X. Working through the parliamentary process

In a useful appendix in *A nation without guns?* Kirsten provides a brief description of the law-making process that is worth summarising.¹¹ In advocacy work aimed at affecting legislation, it is important for those involved to understand how the law-making process works:

- First, the problem to be addressed by the legislation must be identified. In the case of the same-sex marriage issue, the Constitutional Court challenge to the legislature was a consequence of a carefully executed litigation strategy on the part of lesbian and gay organisations. With gun ownership, GFSA had long since put the need for new legislation around firearm control on the agenda.
- When the government formulates policy, it usually goes through two stages: the Green Paper, a draft policy document in which the government presents its thinking to the public and which is published in the Government Gazette and circulated for comment among key stakeholders; then the White Paper, which takes this feedback into account and forms the framework for the new law if, indeed, policy indicates that a new or revised law is necessary. While the Green and White paper processes are intended to promote citizen participation in law-making, they are time-consuming and not compulsory. In the case of the Civil Union Bill and the Firearms Control Bill, this process was not followed and the first documents circulated for comment were, in fact, the initial draft bills.
- A bill is drafted by the relevant government department and, by the time it is published in the Government Gazette, it has been passed by state law advisers and considered by the relevant parliamentary portfolio committee (made up of members of different political parties represented in parliament). When it is published, interested parties are invited to make written submissions within a given time span.
- Portfolio committees are then responsible for organising public hearings where interested parties or individuals who have made written submissions on the bill may be invited to give an oral presentation to the

¹¹ According to Kirsten (personal communication), this summary in appendix five of her book relies heavily on the *Advocacy and lobbying manual* edited by Hillary Morris for the Black Sash, 2000.

“The JWG submission to parliament needed to respond creatively and robustly to the various amendments to the Civil Union Bill as it moved through the legislative process. It was imperative for all of us engaged in the campaign to understand how the law-making process worked in order to strategise accordingly. The key objective for us was to understand and identify points and areas of impact in which we could lobby parliament in favour of legalising same-sex marriages in South Africa. This meant that, at all stages in the legislative process, the influence of lesbian and gay people had to be exerted, directly and indirectly.”

Fikile Vilakazi in To have and to hold (Lobbying for same-sex marriage: An activist's reflections) (page 92)

portfolio committee in parliament, providing an opportunity for the MPs to ask questions and seek clarification. In some instances, the portfolio committee deems it necessary to hold provincial hearings to ensure that the public has a full opportunity to respond. This happened in the case of the Civil Union Bill but not the Firearms Control Bill.

- Thereafter, the committee deliberates on the bill, a process which can be attended by the public but in which they cannot participate. Once the committee has agreed on the bill, it is referred once more to the state law advisers for scrutiny.¹²
- Then the bill is tabled in the National Assembly and, with or without amendments, it is voted on and passed by a simple majority vote.
- It is then referred to the NCOP, where it is debated and voted on. (All bills go through the NCOP but those affecting provinces may be introduced by the NCOP and those that do not affect provinces directly must go through the National Assembly first.)
- Finally, having been passed by both bodies, it is allocated an Act number and referred to the state president for his assent and signature. It is then published in the Government Gazette and becomes law.

Clearly, for any group hoping to influence this process, it is important that it understands how it works and to ensure that, for example, it gives input whenever the opportunity is provided. In the two case studies at which we are looking, key moments for the activists involved to encourage public engagement were the written submissions and the public hearings. This does not mean that they had not been lobbying previously, both in terms of raising the issues for policy clarification and, through intensive lobbying (in the case of GFSA) and strategic public litigation (in the case of same-sex marriage), trying to influence the formulation of the legislation. But it was through the written and, especially, the oral submissions, that the issues of the legislation moved from the inner, largely hidden, recesses of government departments and parliament and, in both cases, exploded onto the public stage.

The two campaigns addressed the writing of submissions differently.

¹² According to Melanie Judge (personal communication during the finalisation of this publication), state law advisers did not sign off on the Civil Union Bill.



The chamber of the Constitutional Court, in Braamfontein, Johannesburg, where key rulings have been made to advance the human rights of the gay and lesbian community.

Photograph: Oscar Guitierrez

“All this information helped demystify the law-making process, providing people with guidelines on how to express their views, rather than telling them what to say.”

From A nation without guns? (page 121)

“The exclusion of gay men and lesbian women from African society as a Western problem ... would find little support in the South African Constitutional Court. I suspect that such and similar views in other parts of Africa would be found unacceptable by the United National Human Rights Commission.”

From Keith Anthony Vermeulen, in To have and to hold (Equality of the vineyard: Challenge and celebration for faith communities) (page 213)

¹³ Fikile Vilakazi, personal reflection.

The GCA developed a toolkit to assist partners in the process of making written submissions to parliament. The submission pack (called “Making sure your voice stops a bullet”) contained the Gun Control Charter and basic information about the law-making process. It included a submission format and guidelines on “five easy steps” to writing a submission. The pack also included information about where to send a submission and by when, the names, political party and contact details of the chair and party leadership in the Safety and Security Portfolio Committee and a summary of the key aspects of the Firearms Control Bill. The GFSA, together with some of the GCA partners, undertook a thorough analysis of the bill, identifying three categories: priority, non-negotiable clauses; desirable clauses; and compromise clauses.

The same-sex marriage campaign decided that the writing and compilation of its submission to parliament required the establishment of a task team with legal capacity. A volunteer legal team worked closely with OUT staff in the drafting process while the lobbying of lawmakers was intensified. Other LGBT organisations made separate submissions and submissions were made at two levels: parliament and provinces. Organisations made calls for submissions and provided fact sheets to assist this process.

The experience of the public hearings were very different for the two campaigns. The same-sex marriage campaign had to deal with both a parliamentary hearing and a set of provincial hearings. The responsibility for the engagement with the public fell to the Portfolio Committee on Home Affairs, the chair of which opposed same-sex marriage.¹³ In September and October 2006, this committee held public hearings on the Civil Union Bill in all provinces. In October, there were hearings at the National Assembly. During October and November 2006, the Portfolio Committee on Home Affairs deliberated the first draft of the bill and amended it significantly. On November 14, the Civil Union Bill was ratified by the National Assembly and on November 23 and 24 the NCOP held hearings on it, passing it on November 28. On November 30, a day before the Constitutional Court deadline, the Civil Union Act was signed into law by the deputy president.



Johannesburg Pride, October 2007

Photograph: Gay and Lesbian Memory in Action

From the written parliamentary submissions (which were more moderate than the verbal ones) and from the National Assembly Debate (comments from the floor went far beyond this and are not quoted here):

“Man-made laws cannot legitimise what is against the natural moral law. Civil law cannot make what is wrong right ...”

“... the Muslim Judicial Council hereby states that it disapproves of homosexual acts and holds it [sic] to be abominable ...”

“Same-sex marriage is against nature, culture (all types of culture), religion and common sense, let alone decency ...”

“Same-sex marriages are so repugnant that only four countries in the world have legalised them.”

Taken from To have and to hold (pages 115 to 146)

The public hearing process unleashed an outpouring of homophobic hate speech. As the JWG noted in a letter to parliament (*To have and to hold*, page 133), no parameters were set by the chairperson, no attempt was made to create a climate of tolerance and respect, and the public hearings were not conducted in a “manner that embodies the principles of our Constitution ...” The JWG letter repeatedly asked that the constitutional values at the core of the constitutional democracy be honoured. They were not. Submission after submission, written and oral, focused on religion, tradition, culture and a version of morality that was not endorsed by any reading of the Constitution.

It seemed to have escaped the attention of all those making these submissions, and those allowing them to be made orally, that the issue was a constitutional one and that their arguments, aside from being vitriolic at times, were irrelevant. In addition, there were those who contended that homosexuality was “unAfrican” and an imperialist agenda from the West, claiming, incorrectly that same-sex relationships did not exist in Africa. Opposition to same-sex marriage brought together unlikely partners and revealed “a high level of ignorance, prejudice and homophobia” (Vilakazi), while the hearings, rather than providing a space where the lesbian and gay community could feel safe to voice their positions, created one for unbridled homophobic rhetoric. As disturbing was the ignorance which informed this hate speech. The majority of people even seemed unaware that sexual orientation was included in the equality clause of the Constitution and did not, Vilakazi says, “understand how democracy works in terms of dealing with the issues of majority versus minority rights”.

In their article in *To have and to hold* (“The achievement of equality and tolerance – how far have we travelled?” page 164), Jody Kollapen and Judith Cohen call the public hearings “a callous foray in homophobia”, and note that “(M)uch of the input at the public hearings appeared to be focused on general opposition to same-sex marriages, with the incorrectly held belief that the more opposition there was to recognition of same-sex marriages the greater the likelihood there would be of convincing parliament not to give effect to the proposed legislative changes. Clearly it was thought that crude



South African cartoonist Jonathan Shapiro (Zapiro) comments on the homophobia of the religious right, during the parliamentary hearings on the recognition of gay marriage.

“... counting the gay faces that were present. It was three against one ... as a result the human rights issue became a queer issue, and it became queer versus God ... the discussion should have been framed as a human rights issue, not as a religious issue.”

Glenn de Swardt in *To have and to hold*

majoritarianism and simple loudness would win the issue for those who did not support same-sex marriages.” (page 168)

The relevant submissions from those who, even if they had problems with the initial version of the bill, engaged with the constitutional issues, seemed to be lost in the barrage of homophobic noise. Nevertheless, reasonable voices did speak out and the Act that finally emerged did take some notice of what they said. It still contained some clauses to which human rights activists objected, notably the right for a civil service marriage officer to refuse to conduct a marriage or civil union on the basis of conscience, and it remained separate from the Marriage Act, which was still only available as an option for heterosexual couples. The final version did, however, create an option for couples to choose marriage as the designation for their union and made it possible for heterosexual couples to choose to be married in terms of the Civil Union Act rather than the Marriage Act. The Act provides all the legal protections and benefits of marriage.

As part of the same-sex marriage campaign, the JWG did ensure the presence of LGBTI activists and individuals at every public hearing in the nine provinces and in parliament. JWG organisations mobilised lesbian and gay people to come to the hearings and voice their support for same-sex marriage. Nevertheless, the JWG lacked a substantial grassroots community on which it could call, and a number of the hearings were held in remote places where there were either very few lesbians and gays or, at any rate, very few who would risk exposing themselves in such a hostile climate.

The GFSA only had to deal with parliamentary hearings - the decision about whether or not to have provincial hearings rests with the relevant portfolio committee. By contrast, the whole process was much more controlled and, while circumstances limited the number of people who came to the hearings, Kirsten is able, in her book, to talk about “the people coming to parliament”. In an interview she described how “watching communities talking to parliamentarians, suddenly democracy became real to me”. She notes, however, that “we were in a period of very open engagement and government was very open and wanting to change. It was a conducive

“The most common feeling expressed by the GCA members active in the Firearms Control Bill campaign was a sense of being involved and the satisfaction of participating in a process in which they felt they had been able to influence the final outcome ... Coming to parliament and speaking out was rewarding on a number of levels. For most individuals, it was the sense of being part of something, of making a difference and contributing to a larger process; for others, it was writing a submission and discovering that they had something worthwhile to say; for still others, it was realising that they were going to be given an opportunity to address MPs directly ... Coming to parliament provided people with networking opportunities ... [with] those who continue to work in the field of public policy advocacy ...”

From A nation without guns? (page 150)

environment, the timing was right – it may not be like that now and we might need different strategies.”¹⁴ It is not surprising, therefore, that, in *A nation without guns?*, she expresses a very positive view of public hearings: “Public hearings are one of the key elements of the law-making process under the new South African Constitution. Stakeholders have a right to be heard and can express their views publicly both in parliament (through its various committees) and, through the media, to the general public.”

Having worked with the GCA partners on written submissions, GFSA turned its attention to the public hearings. The hearings were held between June 19 and 21, and August 15 and 23, in 2000. This, in itself, was unusual as usually only a total of two or three days are set aside for public hearings. This again was more characteristic of the new government in the earlier years than it is now. The intention was to create space for as many people as possible to express their positions, whether in support of, or in opposition to, a new law. During the public hearings, a total of 93 people made oral submissions (by invitation) and, of these, 34 were representatives of GCA organisations. The final debate and vote on the Firearms Control Bill in the National Assembly took place on October 12, 2000 and it was passed by the National Assembly on that day. While there was opposition to the GFSA position in the public hearings and in the National Assembly, it never deteriorated into the kind of illogical rhetoric that marked the same-sex marriage debates.

Although it had very little money, GFSA was determined to get as many people as possible to Parliament in Cape Town for the hearings. While no money was forthcoming from the government, despite promises to the contrary, GFSA was able to secure free accommodation and to persuade enough people to contribute to transport to allow it to sponsor six community representatives to attend the public hearings, from villages and townships all over the country. This was augmented by several community representatives from the Western Cape. In addition, throughout the hearings, the GFSA kept its branches informed through regular updates so that community leaders could talk about what was happening in Parliament without being there, “reinforcing the impact of their collective presence,

¹⁴ Interview during the writing of this publication.

“GCA partners had mixed feelings about the outcome. Some felt that the GCA had achieved more than had been expected, given the high levels of domestic and interpersonal violence in South Africa ... For others, the final clauses were very disappointing, doing nowhere near enough to protect women. So, although most concluded that the Firearms Control Bill had the foundations of good law, many felt there were serious compromises, in particular the loss of key clauses aimed at protecting women’s interests and ensuring their safety.”

From A nation without guns? (page 149)

In South Africa, domestic violence is rife and many women are killed by their partners. The Firearms Control Bill and, in the end, the Act, prevents anyone who has been convicted of an offence in terms of the Domestic Violence Act from being given a competency certificate to own a gun, provided that the conviction carried a prison sentence without the option of a fine. The GCA felt that the courts in South Africa often do not take domestic violence seriously enough and give offenders the option of a fine. This, in the GCA’s opinion, comprised the clause in the Firearms Control Act and rendered it virtually meaningless.

submissions and other efforts”.

In general, GFSA supported the bill as it was put to parliament. Although the efforts of the GCA (and of the ANC) to get the age restriction for gun ownership raised to 25 failed, it was increased from 16 to 21. The ANC bargained a compromise on this against support for the call to limit the number of guns each person could own to one weapon for self-defence purposes. The GCA also did not win the battle over provisions which would have given women and children more protection and in this the alliance did not have ANC support, despite the work the GCA and the GFSA had done before the public hearings to establish relationships with almost every member of the Safety and Security Portfolio Committee.





GFSA: Getting the public hearings right

In summarising the lessons for parliamentary representation, Kirsten makes the following points:

It is important to retain focus on the purpose of the public hearings: considering the recommendations of interested parties for changes and/or additions to a bill.

There were times when pushing the ideological focus was important, but the forums for this existed largely outside the formal parliamentary process and this kind of work needed to have been done in the months and years before.

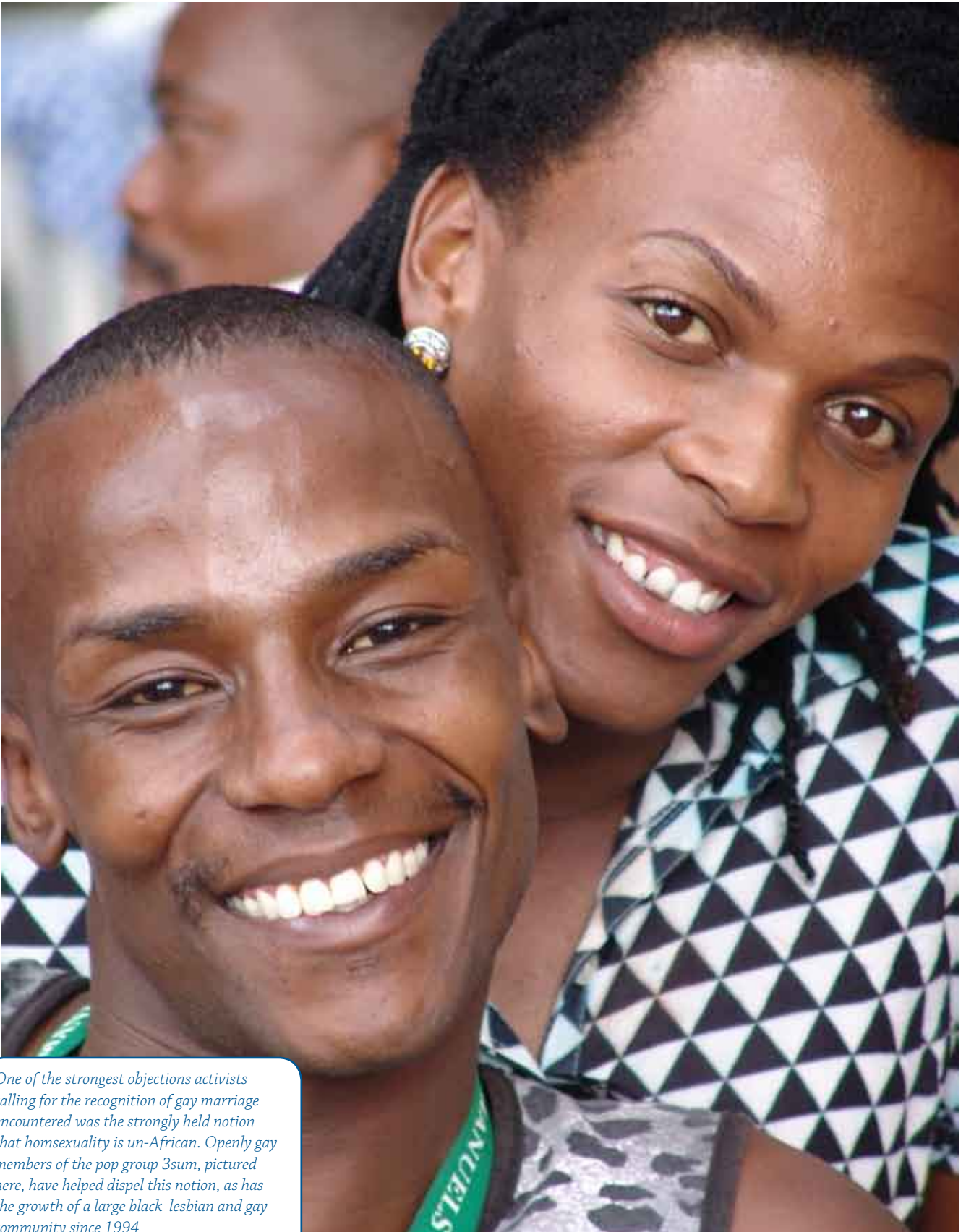
The minds of MPs during public hearings are concentrated on how they get the best possible piece of legislation through – they depend on the knowledge and expertise of the interested parties to help them understand the issues, and to provide very practical guidelines on how to go about making the changes needed in the bill.

In the case of the GCA and GFSA, having a vocal opposition in the form of the gun owners lobby may have helped the GCA members to sharpen their focus, allowing them to act as a key protagonist in support of the new

legislation rather than in opposition to it. It gave the GCA “the opportunity to carve a new and positive space for itself, away from what might have been seen as anti-gun and therefore negative”. Because of this, the issues became clearer; there was a “right side” and a “wrong side” and the wrong side could be refuted with facts, figures and research.

The success of the GCA’s advocacy, however, says Kirsten, was largely a result of taking a strategic approach that included identifying key issues, developing solutions based on data, working to a thought-out media plan and executing a strategy. She believes that if “a group does its networking, identifies its audience and develops its message, it doesn’t need to have a very clear opposition in order to be an effective advocate.” (The same-sex marriage campaign experience suggests, indeed, that a very vocal and hostile opposition, allowed free reign, may distort the debate completely.)

A nation without guns? (pages 142 and 143)



One of the strongest objections activists calling for the recognition of gay marriage encountered was the strongly held notion that homosexuality is un-African. Openly gay members of the pop group 3sum, pictured here, have helped dispel this notion, as has the growth of a large black lesbian and gay community since 1994

Photograph: Helen MacDonald

XI. The struggle continues

“Continued activism, public engagement and education will be necessary to ensure that the Act’s potential is indeed realised not only in law but in the wider social arena.”

David Bilchitz and Melanie Judge in To have and to hold (The Civil Union Act: Messy compromise or giant leap forward?) (page 160)

In absolute terms, both these advocacy campaigns achieved major successes in the form of legislation which, while not fully what the activists involved wanted, went a considerable way to achieving what they wanted. The circumstances of the advocacy campaigns were very different, the government context in which they operated was different. In the one instance, the very nature of the campaign challenged the conservative norms by which most people in South Africa are governed and it was difficult, if not impossible, for most people to recognise the common values of the constitutional democracy that underpinned the call for LGBT equality. In the other, despite a vocal opposition, there was, at least, a recognition of a common desire for security, even if people had very different ideas about how best to ensure this. Nevertheless, both campaigns have much to teach us about advocacy in a constitutional democracy; both provide signposts and lessons for future campaigns.

Both, however, also confronted a need to change the way people think, to change attitudes in such a way that not only the legislation but the very fabric of society could be different. From the vantage point of hindsight, it seems that neither has achieved this. Yes, homosexual couples are now getting married and even some heterosexual couples are choosing to be united in terms of the Civil Union Act rather than the Marriage Act. But homophobia, as evidenced by, for example, hate crimes, including rape and murder, against lesbians, is still rampant in our society. Rather than an increase in understanding that human rights are indivisible, we are fearful of increasing social conservatism, linked to a rise in populism that pushes homosexuality further to the margins of society. The legislation did not make a difference to the reality of violent discrimination against gays and lesbians nor to the lack of protection for them against hate crimes. It legislated for equality before the law but it did not push the frontiers of social justice.¹⁵

Yes, as Kirsten says in her book, South Africa has experienced a reduction in gun deaths; in January 2005, the government launched an ambitious effort to remove surplus and unwanted guns and reduce the number of firearms in circulation in the country and by mid-2005 more than 100 000 firearms

¹⁵ Melanie Judge, in a written communication during the finalisation of this publication, notes that this process of taking up the issues is beginning to happen through the entry point of “hate crimes”, rather than marriage.



Vernon Gibbs marries Tony Halls on 1 December 2006, in the first civil ceremony after the promulgation of the Civil Union Act

Photograph: SouthAfrica.to

“Our gains are tenuous and we are moving into a phase where we are going to have to defend them – we have to make social value out of those rights.”

Melanie Judge in an interview during writing of this publication

had been collected. But she also notes that GFSA has been largely unable, in recent years, to build on or sustain the grassroots support and momentum it generated in its campaigns during the 1990s and the first few years of the 21st century. The GFSA “has been unable to transform into a social movement”. Despite the gains, young men are still fascinated by the display and use of firearms and South Africa and its citizens are not safe and secure. To some degree, Kirsten believes that GFSA got bogged down in the details of the regulations which needed to be in place before the legislation could be effected, rather than focusing on the next step in the longer-term campaign to rid South Africa of guns.¹⁶

The key point here seems to be one mentioned by Marcus and Budlender as being an essential part of a successful public litigation strategy and which seems to apply equally to a process in which there has been advocacy around legislation: follow-up – what happens after the litigation (in this case, passing of the legislation), how raised awareness and a mobilised community or public continue to apply pressure for social change. (paragraph 278)

And follow-up also has something to do with what Marcus and Budlender call “characterisation”. (paragraph 274) Depending on how the issue has been characterised up to that point, it will be easier or less easy to do the follow-up mobilisation. So, for example, in the same-sex marriage situation, those making the case for this to be seen as a human rights issue were drowned out by those seeing it as something specific to the needs, or demands, of the LGBTI community, that had now been, whether people liked it or not, met. This provided limited scope for it to go further. If, on the other hand, it was seen as an equal rights and human rights issue, then the need for further engagement and advocacy would have been reinforced. The process had certainly shown that homophobia and a lack of understanding of constitutionality were rife in the society.

Could the advocacy around the gun control law have been characterised differently? The problem with follow-up here seems to have more to do with how an organisation moves from advocacy mode around the making of legislation to that around influencing implementation. This, says Kirsten,

¹⁶ Discussion during the writing of this publication.



Photograph: GFSA

“We knew we should be involved, but what do you do to mobilise people after the legislation? We had people phoning and asking what they could do but we didn’t know what to do with our success.”

Kirsten in an interview during writing of this publication

“requires another set of skills, new partners, a different pace”. She remains unsure of what the role of an organisation such as GFSA is in this phase.¹⁷

While Marcus and Budlender note (paragraph 286) that some public litigation cases do not require follow-up, and this is probably true of some successful advocacy around legislation, this was not the case in either of our examples, nor is it in many others. In both our case studies, there was still unfinished business and, in addition, while a battle may have been won, there was still a long way to go before the war was won. Aside from the most basic follow-up – seeing that the legislation is put into effect by the relevant government departments and, possibly, improving the legislation over time - both these legislative victories were part of much larger projects. In the case of GFSA, its stated aim was a society without guns, not just a society in which there was better gun control. And the same-sex marriage advocates, at least those who understood the legislation as part of a larger strategy, were concerned about the indivisibility of human rights and the long-term objective of a society that celebrated diversity rather than let it get a foot, grudgingly, in the door.

Marcus and Budlender quote a respondent in the refugee sector as saying: “In the use of litigation as a catalyst for social change, it is necessary to have strong representative organisations on the ground to ensure implementation of the gains made through litigation.” (paragraph 285)

They conclude that “rights generally are most effective when they are linked to social movements . . . Some form of social movement is necessary to identify these issues, mobilise support around them, make use of political pressure, engage in litigation where necessary, and monitor and enforce favourable laws and orders by the courts.” (paragraph 296.3) Neither GFSA nor the LGBTI community have yet been able to transform into social movements nor to form ongoing alliances with those who could help them reach their long-term goals. This seems to indicate that a strategy for “after legislation” needs to be built into the original planning so that the impetus of generally favourable legislation is not lost after the successful battle but is entrenched for the long haul.

¹⁷ From an interview during the writing of this publication.



Sifiso and Shukumbuzo Tigare were married in the Hope and Unity Metropolitan Community Church, in Mayfair, Johannesburg, in December 2006, shortly after the promulgation of the Civil Union Act. They were the first couple to be married in a religious ceremony under the new act.

Photograph: *Gay and Lesbian Memory in Action*



“Changing deeply entrenched public attitudes, values and beliefs that result in homophobia is the greatest challenge the gay and lesbian community faces. This cannot be secured through legislative fiat alone. It can only come about through greater visibility and community engagement, by moving out of the gay ghetto into broader social struggles, and by making common cause with others who still do not enjoy the full fruits of democracy.”

Gerald Kraak in To have and to hold (Are our lives OK? Reflections on 13 years of gay liberation in South Africa) (page 283)

This will require:

- Clarity on long-term goals;
- Ongoing informed understanding of what is likely to be a changing context, both in a wider sense and in the sense of monitoring implementation of legislation and court outcomes;
- Building partnerships that are both strategic and progressive, including partnerships with donors and sponsors who recognise the importance of resourcing advocacy work;
- Mobilising specific constituencies within a human rights and constitutional context so that they are not isolated in their mobilisation;
- Working with the media in a proactive and consistent way;
- Working through the parliamentary process and the court process, including lobbying parliamentarians and would-be parliamentarians on the basis of their commitment to a constitutional democracy; and
- Planning strategically and in a timely manner for the next step in campaigning.



About the authors

Marian Nell has an MBA from the University of the Witwatersrand and an honours degree in Psychology from the University of South Africa. She and **Janet Shapiro**, who has a BA degree in Ethics and English from the University of Cape Town and an honours in Sociology from Rhodes University, have worked together as organisational consultants for the past 28 years. Initially they worked with anti-apartheid organisations but, since 1994, have done consultancy work in development around the world, with a specific emphasis on Southern Africa.

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Case Study

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