

4. INCLUSION OF AN EXTRA FUNCTION

- A PROPOSAL TO ENSURE THAT THE CGE SHALL ACTIVELY CHAMPION THE GENDER RIGHTS OF SOUTH AFRICANS WHEN SUCH RIGHTS ARE VIOLATED OUTSIDE THE REPUBLIC WILL BE VERY DIFFICULT/IMPOSSIBLE FOR THE FOLLOWING REASONS :
 - (i) THE CGE DOES NOT HAVE FORMAL RECOGNITION/STANDING IN ANY FOREIGN TRIBUNAL/FORUM/COURT TO ENFORCE OR CHAMPION GENDER RIGHTS IN A FOREIGN COUNTRY.
 - (ii) WHEN THE CGE DECIDES TO INTERVENE IN CASES THEN EXPECTATIONS ARE CREATED IN THE MINDS OF COMPLAINANTS THAT A SOLUTION WILL BE FORTHCOMING. A SATISFACTORY OUTCOME CANNOT BE GUARANTEED IN ALL INSTANCES. THIS WILL SERVE TO UNDERMINE THE CGE.
 - (iii) WHERE HUMAN RIGHTS VIOLATIONS ARE JUSTICIABLE/ENFORCEABLE
 - IN SOUTH AFRICA THIS MAY NOT BE THE CASE IN ANOTHER COUNTRY (EG 1) [IN BOTSWANA A SOUTH AFRICAN WOMAN WAS CHARGED WITH MURDER AND SHE WAS FACED WITH THE DEATH PENALTY. SUCH A SANCTION IS NOT APPLICABLE TO CITIZENS OF RSA. DESPITE NUMEROUS PROTESTS BY CIVIL SOCIETY AND THE RSA GOVERNMENT THE ACCUSED WAS STILL HANGED DESPITE BEING A SOUTH AFRICAN.
 - (eg 2) IF A SOUTH AFRICAN WAS DENIED MEMBERSHIP TO A CLUB IN ZIMBABWE BECAUSE OF HIS SEXUAL ORIENTATION. IN SOUTH AFRICA THIS WOULD BE AN INFRINGEMENT TO HIS RIGHT TO EQUALITY. UNFORTUNATELY, IN ZIMBABWE THIS EXCLUSION ON SEXUAL ORIENTATION MAY NOT EVEN BE REGARDED AS UNLAWFUL.

CONCLUSION

1. THE CGE ACT IS BEING AMENDED EXTENSIVELY. THE CGE HAS ALREADY COMMENTED ON THE DRAFT ACT. A PROCESS WHERE ALL AMENDMENTS ARE INCLUDED TOGETHER WILL BE HELPFUL TO ASCERTAIN THE FULL IMPLICATION OF ALL AMENDMENTS. IN THIS REGARD THE CGE RECOMMENDS THAT THE PROPOSED AMENDMENTS HEREIN BE INCORPORATED WITH THE COMPREHENSIVE AMENDMENT OF THE CGE ACT.
2. IN TERMS OF OUR CONSTITUTION CHAPTER 1 PROVIDES AS FOLLOWS :

SECTION 1: THE REPUBLIC OF SA IS ONE, SOVEREIGN, DEMOCRATIC STATE FOUNDED ON THE FOLLOWING VALUES -

- (i) Human dignity, the achievement of equality, and the advancement of human rights and freedoms.
- (ii) Non-racialism and non-sexism
- (iii) Supremacy of the constitution and rule of law.

In terms of the above RSA is a sovereign state and expects this sovereignty to be respected. Likewise we as South Africans and the leaders in the continent should accord the same kind of respect to other states.

3. The financial implications associated with the expanded mandate will be huge. As it will involve briefing foreign lawyers, employing international staff with the requisite expertise and meeting related costs.
4. Under the circumstances the proposed amendments are prohibitive in terms of costs and the necessary formalities which have to be satisfied.