Strategies to Protect Vulnerable Litigants: LGBTI persons

Nthabiseng Mokoena
Manage expectations

- Letting the client know the what they are getting themselves into;
- Litigation can be lengthy
- Results are not guaranteed
- Length and time of the process
- Consequences and impact of litigation in criminalised settings, affects a number of persons, it can set a standard and change point of views
- It will not replace legislative reforms but may speed them up
- Domestic courts are usually not prepared for purely legal, professional argumentation
Understand the Connections with Social Justice Movement in the Country

- The effects of the case are not in a vacuum
- Judgement might set back the efforts of the LGBTI movement in the country or it might be helpful.
- Effectiveness of using an NGO instead of an individual during PIL
- Effectiveness of using NGOs to raise awareness on the issues of the case
- Where an individual is the litigant, consider LGBTI organisations to offer psycho-social support during the process
Understand the complexities of laws used to “criminalise”

• Understanding who/what is criminalised an act or a person? Eg. Sodomy laws
• The law is often confused in dealing and articulating issues of sexuality, sex and gender
• Transgender people vs the law
• Intersex people vs the law
Respect and Privacy

• Be open and receptive to your trans*client’s self-identification
• Resist making assumptions about a person’s gender identity and instead ask your client how he or she would prefer to be addressed.
• Use the correct name and pronoun in all pleadings, correspondence, and other documents
• Maintaining the privacy and anonymity of an individual client if requested
Understand the client’s difficulties

• When the case is public it is often followed by sensationalized media coverage
• Transgender and gender non-conforming persons struggle to navigate public spaces e.g. even the most basic of facilities such as bathrooms
• LGBTI persons fear the law and avoid interacting with it
Thank you