

Understanding gender rights

On the 17th May 2018, the World celebrated the International Day against Homophobia, Transphobia and Biphobia (IDAHOTB) through discussions around the theme Alliances for Solidarity with National and county Government officials, civil society and community based partners on shedding light on the overlapping exclusion of the LGBTIQ, based on their sexual orientation, gender identity, tribe, religion and social status in access to social freedom and inclusivity in the diverse spaces meant to be enjoyed like every other Kenyan Today.

BILL OF RIGHTS

Chapter 4 of the Constitution distinctly - in Articles 27, 36 and 43 - provides for fundamental human rights, freedom of association and the right to the highest attainable standards of health, which emphasizes on the right to healthcare services and reproductive health care as stipulated in (Article 43(1) (a) (2) and (3)).

The Government has also developed a number of policies and established various institutions that seek to promote and protect the sexual and reproductive health rights of Kenyans. As such, Kenya is obligated to work towards the fulfillment of this right in line with international and domestic standards. In spite of these elaborate measures, violations of the right to sexual and reproductive health continue to be experienced throughout the country by sexual minorities (gay, lesbian, bisexual, transgender, intersex persons and sex workers) and marginalized and vulnerable groups (people with disabilities, people living with HIV and AIDS, Adolescents and youth, internally displaced persons and refugees). They are particularly noted as most vulnerable to stigma and discrimination associated to access to health and violations of human rights according to a Report of the Public Inquiry into Violations of Sexual and Reproductive Health Rights in Kenya by the KNHCR, April 2012

Multi-sectoral inclusion of human rights defenders and improvement of access to health should involve State and non-state actors and must not, whatsoever, beliened to a movement of recruitment, promotion and exploitation of the sexual minorities, marginalized and vulnerable groups into criminal acts that contravene the Kenyan Laws.

COURT OF APPEAL

Discrimination, acts of physical and sexual violence that may result to death, blackmail and hate based on sexual orientation and gender remains common in Kenya. The end of forced anal examination to prove homosexuality targeting gay men was recently made in a landmark Ruling by Court of Appeal Appellate Judges Hon. Alnasir Visram, Hon.



Wanjiru Karanja and Hon. Martha Koome. The Appellate Court over-turned an earlier decision by the High Court and declared the tests illegal on examinations of two men on suspicion of having sex on the 23rd of March 2018. The landmark case was brought by the National Gay and Lesbian Human Rights Commission (NGLHRC) after two men were arrested in 2015 on suspicion of having gay sex, which is illegal in Kenya and punishable by 14 years in jail. In 2016, Petition 150 and 234 of 2016 was filed at the High Court seeking to challenge the constitutionality of Sections 162(a)(c) and 165 of the Penal Code.

CONCLUSION

The National and County Governments and policy-makers need to involve the LGBTIQ in the decision-making processes and in public participation forums to effect the aspect of equality and anti-discriminatory strategies in

legislation, to fully protect the human rights for all Kenyan Citizens.

Constitutional institutions like the Kenya National Human Rights Commission, National Gender and Equality Commission and the Commission of Administrative Justice amongst other bodies, should be sensitized to factor in LGBTIQ led initiatives and provide technical support in access to justice and freedoms while ensuring equal opportunity and reduction of inequalities by promoting appropriate legislation, policies and action paramount to the fight against stigma and discrimination of sorts.

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