

Seeking Space, Place, and Human Rights in the 21st century: Kenya's Gay Men at a Crossroads and Civil Society's Response

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Abstract

Concerning sexual minorities and specifically gay men in Africa, the discord between law and practice emerges from a bias towards heteronormative behaviour steeped in cultural epistemologies. Gay men have consistently experienced difficulty in expressing their right to love, and freedom to live visibly in places of their choice. Additionally, a lack of overt institutional socio-structural support for their rights has done little to alleviate their situation despite protective legal provisions entrenched in Kenya's constitution. This paper investigates the tenuous nexus between legal protections and the social realities of Kenya's gay men with a view to exposing fissures. Using the qualitative research paradigm, we explore the socio-legal contradictions experienced by gay men in Kenya whose continuous challenging of entrenched socio-cultural attitudes and macro structural bias is framing the ongoing conversation. We find that the role of civil society is multidimensional, fundamental and indispensable. First, civil society is well positioned to debunk societal myths and reduce bias, discrimination and animosity towards gay men. Second, it facilitates through advocacy meaningful inclusiveness of gay men in Kenya's social spaces. Finally, civil society enhances legal protection through institutional frameworks, safeguarding and ensuring recognition of the human rights of gay men in Kenya.

Key Words

Gay men, civil society, minority rights, constitutional rights, human rights

Introduction

Since the dawn of the third millennium AD, sexuality has been included in debates pertaining to the desecration of inviolable rights, individual liberties and freedoms. Although these have subsequently become a key aspect of modern liberalism, their inclusion in the human rights debate has tended to be obscure. Cases of discrimination and prejudice against sexual minorities have been conspicuously missing from mainstream media discussion and public engagement out of fear, ridicule and stereotyping. Notably, however, the current global dispensation has little patience for partial consideration of human rights³. The 1948 Universal Declaration of Human Rights (UDHR) for instance, advances the thesis that all persons are born free and have a right to dignity and equal treatment.⁴ Despite this assertion embodied in the wording of the UDHR, sexual minorities such as gay men in Africa continue to have their rights violated. Indeed, while Kenya can be singled out as a signatory to various international instruments tailored toward protecting human rights, it has consistently displayed laxity in assuring sexual minorities a full enjoyment of their rights.

Societal and religious norms and beliefs tend to frame tradition supporting heterosexual sexual unions as the only appropriate sexual relations.⁵ Therefore, same-sex sexual relations are abhorrent abnormal behaviour, deviant and taboo,⁶ the Lesbian, Gay, Bisexual, Transgender and Queer (LGBT) community is perceived as requiring admonition, its influence checked and visibility diminished. Similarly, societal myths in Kenya have supported an uncompromising culture toward homosexuality deeming it a curse from God and the ancestors due to unpaid debt. As such homosexuals should be banished from the community lest they spread contagion.⁷ Evidently, in Africa, deviance and disregard for existing social norms, social order and tradition are not tolerated.

³Lukacs, John, 2004. 'The Triumph and Collapse of Liberalism.' In *The Chronicle of Higher Education*

⁴UN, 1948. Universal Declaration of Human Rights (UDHR).

⁵Leila J. Rupp, 2001. 'Toward a Global History of Same-Sex Sexuality.' In *Journal of the History of Sexuality*. Vol. 10, No. 2, pp. 287–302.

⁶Robert L. Kinney, III, 2015. 'Homosexuality and Scientific Evidence: On Suspect Anecdotes, Antiquated Data, and Broad Generalizations.' In *Linacre Quarterly*. Vol. 82, No. 4, pp. 364–390.

⁷Adamczyk, A. 2017. *Cross-National Public Opinion about Homosexuality: Examining Attitudes across the Globe* (1st Ed.). University of California Press, pp. 3-7. <http://www.jstor.org/stable/10.1525/j.ctt1jd947w>

The problem

The majority of the countries in the Southern hemisphere, including Kenya, maintain harmful cultural practices and laws that prohibit, regulate, or restrict carnal activity amongst consenting adults of the same sex.⁶ Such laws and cultural norms are then used by law enforcement to harass and arrest gay men. Similarly, opponents of LGBT unions have proceeded to base their arguments on the sacredness of the union between men and women as sanctioned by God to constitute marriage which is the basis for family life.⁸ The assumption that heterosexual sexual relations are a gift from God should thus not be challenged whatsoever. The sentiment on God's position is largely drawn from the Judeo-Christian religious and cultural tradition informing the foundation of marriages in contemporary society.⁹ Therefore, to be a gay man is unnatural and an abomination. Notably, the greatest obstacle to gay men's experiences in Kenya is the relative silence of institutions otherwise tasked with advancing minorities' sexual rights. Consequently, existing historical evidence indicates a trend of labelling gay men as second-class citizens, further denying them equal access to basic social services.¹⁰

Recent studies continue indicating that in every region of the world there is a form of mistreatment premised on real or imagined carnal orientation and gender identity.¹¹ This has prompted the UN Human Rights Council adoption of a resolution in 2011 which voiced great apprehension towards the violent deeds meted upon sexual minorities.¹² Another resolution adopted in the year 2014 having similar goals as the previously mentioned one, set to publicize those countries perpetuating violence towards sexual minorities. Interestingly this 2014 resolution not only mentions but gives credit to the countries making progress on the need to protect the rights and interests of LGBT persons within which gay men are a category. These tangible efforts notwithstanding, there has been little support from the United Nations to individual states seeking the reinforcement of sexual minorities' rights. This has led to a noticeable concerted effort by non-governmental organizations (NGOs), civil society

⁸William N. Eskridge, Jr. 1993. 'A History of Same-Sex Marriage.' In *Virginia Law Review*. Vol. 79, No. 7, pp. 1419-1513.

⁹Chai R. Feldblum, 2008. 'Moral Conflict and Conflicting Liberties.' In Douglas Laycock, Anthony R. Picarello, Jr., & Robin Fretwell Wilson eds. *Same-sex Marriage and Religious Liberty: Emerging Conflicts*. Lanham, M.D.: Rowman & Littlefield Publishers, Inc. pp. 123-156.

¹⁰Cornwall, A., Sonia Correa and Susie Jolly, 2008. *Development with a Body*. London: Zed Books.

¹¹International Council for Not-For-Profit Law: Global Trends in NGO Law. LGBTI Civil Society Organizations Around the Globe: Challenges, Successes, and Lessons Learned. Vol. 7, No. 2. pp.3.

¹²Human Rights Council resolution 27/32, Human Rights, Sexual Orientation and Gender Identity, A/HRC/RES/27/32, p. 6.

organizations (CSOs) and interested lobby groups agitating on behalf of the LGBT community calling for the mainstreaming of international policies and resolutions into local legal machinery. This has been carried out through civic education on social media campaigns and performance arts shows within local environments although outcomes have been mixed. Having said this, the goal of awareness creation has been achieved somewhat.

Across the globe, there are over 70 countries that have instituted laws against discriminating against gay people who are living in constant fear of rejection.¹³ Among African countries with little to no tolerance for gay men is Uganda where an anti-homosexuality Act which was commonly known as the anti-gay bill has been enacted into law subsequently increasing the opportunity for the torture and oppression of an already highly vulnerable sexual minority. Similarly, the European Court of Human Rights has found Russia guilty of desecrating the right to a peaceful assembly when she denied a gay man the right to organize a pride march.¹⁴ Evidently, while gains are being made in some countries, there is a notable pushback in others leading to the erosion of any achievements secured. According to the UNHRC,¹⁵ the human rights situation of lesbian, gay, bisexual, transgender (LGBT) and intersex persons remains a matter of grave concern worldwide, with continuing, serious and widespread violations perpetrated against individuals based on their sexual orientation, gender identity and sex characteristics.

Since Kenya is a party to various international regimes that are tailored toward protecting human rights, there is an obligation bequeathed upon it to uphold the proper standards of human rights as per the stipulation.¹⁶ These rights are to be enjoyed under the principle of universality, thereby ensuring total compliance with the spirit of human rights. Specifically, Article 10 of the Constitution of Kenya includes equity, social justice, equality, non-discrimination and 'protection of the marginalized' among the national values and principles of governance that are to be used in applying and interpreting the Constitution.¹⁷ This is supported by Article 20

¹³Courtney E. Finerty, 2012. 'Being Gay in Kenya: The Implications of Kenya's New Constitution for its Anti Sodomy Laws.' In *Cornell International Law Journal*. Vol. 45, pp. 431-457.

¹⁴Human Rights Watch, 2010. 'Russia: European Court Rules Gay Pride Ban Unlawful. Russia Should Allow March and Guarantee Freedom of Assembly.'

<https://www.hrw.org/news/2010/10/21/russia-european-court-rules-gay-pride-ban-unlawful>

¹⁵UN, 2016. 'Living Free and Equal: What States are doing to Tackle Violence and Discrimination against Lesbian, Gay, Bisexual, Transgender and Intersex People.' New York & Geneva

¹⁶Human Rights Watch, 2018. 'World Report.'

https://www.hrw.org/sites/default/files/world_report_download/201801world_report_web.pdf

¹⁷See GoK, 2010. Constitution of Kenya, art. 10.

(4)(a) which lists equality and equity as values to be promoted in interpreting the Bill of Rights and Article 21 (3), which creates a duty on state actors to address the needs of vulnerable groups in society.¹⁸ However, despite such legal developments sexual minorities in Kenya continue to be victimized and their rights violated. These major milestones though interested in advancing the rights of gay men, are unable to tame the violence and targeted discrimination in the form of verbal abuse, harassment, occasional cases of rape and even murder.¹⁹ What has fuelled the flames of victimization further is the rhetoric of leaders seeking electoral mandate through populist proclamation against the LGBT group further complicating the role of CSOs in sensitizing citizens about universal human rights which are inclusive in nature and design. To extend animosity further, members of Kenya's parliament have formed a caucus to 'fight' the entire LGBT community in an attempt to demonize gay men and enhance aggressive prosecutions under the Penal Code.²⁰ This is in disregard for the constitution which accommodates homosexuality under the universal expression of rights that are guaranteed. In a study, conducted by the Kenya National Commission of Human Rights (KNCHR), it emerged that the punishments for sex against what the penal code refers to as 'the order of nature' which attracts up to 14 years of imprisonment in Kenya has further contributed to fear among sexual minorities whose expression and enjoyment of rights are curtailed.

Interestingly, although there exist numerous civil society organizations (CSOs) locally advocating for the equality of all individuals under the law, the same cannot be said about their contribution to the protection of the rights of the LGBT community. Similar experiences are documented among global CSOs. Specifically, CSOs both local and global face numerous hurdles in their general advocacy agenda as protectors of the rights of key populations including LGBT persons. The hurdles are socially, economically and politically embedded and culturally reinforced to the extent that many are institutionalized and packaged as going against culture. This has led to the continued overt violation of gay rights by several countries across the world, in blatant disregard of the UN declaration for universal human rights.²¹ The outcome of this as evidence indicates is that gay men prefer to remain in the closet as a way of protecting and preserving themselves. This means that they do not disclose their status nor do they freely

¹⁸Ibid. Arts. 20 (4) a and 21 (3)

¹⁹Cornwall Andrea, Sonia Corrêa, Susie Jolly, 2008. *Sexuality, Human Rights and Development*. London: Zed Books Ltd. pp. 45-53.

²⁰See GoK, Penal Code, Cap. 63 Laws of Kenya, Sections 62, 63 & 65.

²¹UN 1948. Universal Declaration of Human Rights (UDHR).

and easily access relevant medical services due to fear of stigma, discrimination and prejudice.²²

More recently Kenya has witnessed court battles where sexual minorities are agitating for justice and equality. Specific cases include Eric Gitari vs. the NGO Coordination Board.²³ This is a case that was filed at the High Court and whose argument was that Article 36 of the Constitution of Kenya (2010) had been contravened by the state.²⁴ Following, was a landmark ruling in which the court ordered the NGO Coordination Board, to register the National Gay and Lesbian Human Rights Commission (NGLHRC). This ruling was documented as a win for the LGBT community giving gay men a reprieve. However, this was short lived as the NGO board appealed the ruling which was later dismissed by the appellate court headed by a five judge bench with three upholding the high court ruling and two dissenting.

The principle of minority rights in scholarship

Since human rights are universal, and every human being is born with and also possesses the same rights as everyone else, the principle of equality should be applied to everyone regardless of their religion, political affiliation, race, origin, sexual orientation or ethnic background.²⁵ Therefore, these rights belong to every person, in all places and at all times.²⁶ Scholarly literature continues to point out the shortfalls in minority rights globally as a concern because failure to do so leads to greater social, political and economic inequalities, impunity and injustice.²⁷ Indeed, Sociological and Anthropological literature points to evidence that sex between people of the same gender occurs in all societies.²⁸ However, in Africa, homosexuality is most often not associated with a homosexual identity. Instead, it is explained as a few men having sex with men but 'normally' with women as well, for procreation. Such statements are made to accommodate the view that sex between men is prohibited under sodomy laws whose origins can be traced to Kenya's colonial era and hegemonic cultural systems rather than

²²Cornwall, A., Correa, S., and Jolly, S., 2008 Op. Cit.pp.45-53

²³In this case the argument was that there was no organ recognized by the law protecting the rights of LGBTQs hence the need for its registration. However, the NGO Coordination Board declined to register the organization.

²⁴Human Dignity Trust. Criminalization of Homosexuality. 25, October, 2015.

²⁵Fried, Susana T. 2004. Sexuality and Human Rights. The President and Fellows of Harvard College (2004): pp. 273-304.

²⁶Cranston, 1973. *What are Human Rights?* Taplinger Publishing Co. Australia.

²⁷Florien M. Cramwinckel, Daan T. Scheepers, Jojanneke van der Toorn, 2018. Interventions To Reduce Blatant And Subtle Sexual Orientation- And Gender Identity Prejudice (SOGIP): Current Knowledge and Future Directions. In *Social Issues and Policy Review*, Vol. 12, No. 1, 2018, pp. 183—217.

²⁸Anyamele, C. *et. al.* (2005). Sexual Minorities, Violence and AIDS in Africa (English). Africa Region Workingpaper series; no. 84. Washington, D.C.: World Bank Group. p. 1

cultural norms. From the foregoing, it behoves CSOs to roll out and provide awareness creation on local and global laws protecting sexual minorities, they can also take this opportunity to outline cultural accommodations that are supportive rather than those vilifying the LGBT.

A cursory glance at history indicates struggles by CSOs to eliminate discrimination, and stigma and bring to an end state-sanctioned violence towards the LGBT community, not only in Kenya but universally. For example in Russia, contemporary response to state oppression and rights violations is articulated through civil society organizations seeking to push back on state victimization of sexual minorities.²⁹ However, the stark reality is that there is no appreciation of civil society who point out the 'disconnect' especially reflecting oppressive government practices, including such provisions in law as in Law No. 135-FZ on 'non-traditional sexual relations hereby targeting LGBT persons in Russia. According to Cornwall (2008), the biggest challenge to CSOs in their attempt to agitate for fair treatment of LGBT persons is adjusting individual claims to fit those of the society.³⁰ Notably, it has become increasingly difficult for community-based organizations including CSOs to mitigate the negative socio-psychological experiences of gay men. This is because of a phenomenon frequently referred to as a deliberate shrinking space for civil society. Coupled with this is the lack of funding to finance partnerships and collaboration among CSOs so that they can extend their services at individual and institutional levels, and lobby socio-political institutions charged with the responsibility to ensure the preservation of human rights and supportive citizens or allies.³¹

At the organizational level in Kenya, active civil society organizations focused on supporting the LGBT community have on many occasions faced harassment by law enforcement and the government with several calls to 'freeze' their funding in the hope that LGBT individuals will despair and membership to the community will dwindle. The research studies presented in this document highlight and document the challenges facing sexual minorities as individuals and as a social category, as well as institutional bias through the disregard for the application of existing mechanisms of intervention on the one hand and the other, the unwillingness of

²⁹Paul, Chaney, 2018. Civil Society, "'Traditional Values' and LGBT Resistance to Heteronormative Rights Hegemony: Analysis of the UN Universal Periodic Review in the Russian Federation." In *Europe-Asia Studies*. Vol. 70, No 4, pp. 638-665.

³⁰Cornwall, A., Sonia Correa and Susie Jolly. *Development with a body*. London: Zed Books, 2008.

³¹Felicity, D., 2018. *The Global State of LGBTIQ Organizing: the Right to Register*. OutRight Action International

institutions and some citizens to accommodate variant sexualities. Scholars in recent literature are currently documenting negative social experiences of gay men and the stumbling blocks faced by CSOs in their mandate to uphold the dignity of all humans. The importance and need for robust scholarship to highlight the social and institutional disregard for minority sexual rights cannot be over-emphasized because it is the only way to pose questions regarding the needs of sexual minorities, the salience of inclusion for mental well-being, and to harmonize local expectations with international approaches towards gay men particularly, and sexual minorities generally.³²

Applying the Interest Theory to Gay Men's rights

Advocates of this theory argue that the principal function of human rights is to protect and promote certain essential human interests. Thus, securing human beings' essential interests is the principal ground upon which human rights may be morally justified. The crucial feature of this theory being the idea that a right must be justified instrumentally as a means of protection of rational goals. To this extent human rights are inalienable because they protect particularly important interests. This theory evolved from Jeremy Bentham(1748-1832) who was the father of utilitarianism where he argued that actions should be judged right or wrong to the extent that they increase or decrease human well-being or 'utility.'³³ It was from this way of thinking that interest theory derives disagree. Interest theorists maintain that the function of a right is to further the right-holder's interests.

A plain interpretation and application of this theory requires the assumption that every individual has a distinctive right and others have a duty to protect that right. The underlying principle therefore is that the safeguard and protection of citizens' rights against transgression from another citizen in a given polity³⁴ can be reinforced by an advocacy group such as a civil society organization (CSO). Finnis (1980) presents an elaborate explication of the interest theory positing that the prominence of human rights lies in the provision that they are the foundation for the sustainability of mankind. In fact, development agendas and the strategic plans of various countries use human rights to benchmark policy. Finnis points to the following interests as necessary for upholding and safeguarding human rights namely, life and its

³²Foucault, Michel. 1984. *The History of Sexuality*. New York: Pantheon Books.

³³See H.L.A. Hart, 1982. 'Legal Rights.' In *Essays on Bentham: Jurisprudence and Political Theory*. Oxford & New York: Oxford University Press, p. 162

³⁴Ibid

developmental aptitude; pursuit and attainment of knowledge; frivolous activities; visual countenance; amiability and companionship; practical reasonableness; and finally, religious or spiritual experience.³⁵ All these interests provide support for human well-being while in their pursuit of happiness and unwittingly offer a foundation upon which the claim of the right to liberty, finds legitimacy.

The interest theory approach provides a constructive defence for the application of the human rights creed of rights for all, while nurturing inclusivity. This is done irrespective of socially constructed prejudice due to the expectation of and the demands of universality and commonality of humanity. This theory provides a philosophy upon which CSOs can develop strategic plans with partnership clauses while appealing to scholarship to expose gaps for further research. It may well be that considering the obstacles faced by CSOs articulating gay men's rights in Kenya, the use of philosophical arguments incorporating ethics, and strategy to leverage policy by CSOs while allowing for multidisciplinary approaches in the humanities and social sciences. Evidently, the scope of CSO engagement should be expanded to include social institutions, public-private partnerships (PPP) and lobbying the legislators presents a window of opportunity. Evidently, if CSOs in Kenya were to be supported by scholarly evidence on best practices and shared experiences globally, the growth of local allies will be exponential.

Study methodology

Design

A qualitative exploratory research design was instrumental in providing entry into an assessment of activities and strategies of CSOs concerned with protecting and promoting the rights of gay men in Kenya.³⁶ This exploratory design was able to expose intersectionalities affecting gay men in Kenya who have hitherto had their concerns conflated with those of gay men in the West yet their circumstances are unique. Additionally, current literature has failed to emphasize these intersectional ties yet they often present dilemmas when justice is being pursued. The responses from the interviews were useful in guiding trajectories of future programmatic activities that are holistic rather than truncated as has been the case.

³⁵Finnis, J., 1980. *Natural Law and Natural Rights*. Oxford: Clarendon Press.

³⁶Creswell, J. W. 2003. *Research Design: Qualitative, Quantitative, and Mixed Method Approaches*. Sage Publications. Lincoln: University of Nebraska.

Data collection and analysis

Primary data was collected from members of the LGBT community and civil society actors in Nairobi with the study purposely targeting a total of 4 civil society organizations, and 15 key informants from the key population. Further, a focus group discussion and key informant interviews (KIIs) including the coordinator of county health facilities and medical practitioners from a public hospital and two from private hospitals provided rich sources of primary data.

Interviews were mainly conducted in the evenings which was ideal for most of the respondents. The interviews were tailored to identify experiences of gay men in Kenya, to single out both overt and covert norms hindering the enjoyment of their rights, and the interface with CSOs strategy as a response. The primary sources provided impressions from the attitudinal attributes while the secondary sources were used to triangulate data. Meanings were then imputed following axial coding in the process of analysis. It is noteworthy that the respondents in the CSOs were only male. These purposely select CSOs are located in Nairobi which is the capital city and a hub for many other civil society organizations fighting for human rights. Additionally, since Nairobi is a cosmopolitan space it tends to have a good number of gay men who are easily traceable because they have formed social support groups for psycho-social support. These accruing advantages of the city as a data collection site go to enhance the robust nature of this research. The presentation of findings takes on a narrative and thematic form providing insights and systematic information for discussion.

Key Informant Interviews and FGDs

Given the sensitive nature of the research's subject matter, the study strategically used two sets of key informants (KIs) and one FGD. One set of KIs comprised human rights experts and experienced officials of four CSOs: National Gay and Lesbian Human Rights Commission, National Coalition for Human Rights Defenders, HOYMAS, SWOP City and Katiba Institute. The second set of KIs was drawn from point persons among the gay men. The KIs from human rights organizations were purposively selected from a list following the researchers' knowledge of the existing strengths and weaknesses of each organization in Kenya. The KIs were deemed representative and privy to the institutional sentiments of the organizations selected for the study. A total of seven key informants from the CSOs were interviewed through the aid of a key informant guide administered by the researchers whereas fifteen males from the LGBT community were also interviewed.

The focus group discussions (FDGs) sought information from the resultant group synergy that elicited more uninhibited 'sharing' of responses through the free flow of somewhat guided group interaction. Participants of the FGD were drawn from around Nairobi through the snowballing technique and were on average aged between 21 and 34 years and mostly engaged in various professional enterprises, including accountancy, community health work, law, education, and social work. Incidentally, a number of the professionals had lost their jobs, although it was not clear if being gay had played a role in their dismissal. All the participants in the FGD were male and the researchers convened them in a town hall at the swop city boardroom. The size of the FGD was 13 persons constituting the key informants and three facility administrators. The moderator for the FGD was a trained social scientist as the researchers observed and recorded the session lasting for two and half hours.

Ethical considerations were observed throughout the data collection and analysis process upholding the confidentiality of the data, and respondent identity through a rigorous de-identification process where during the reporting of finding pseudonyms are being used in place of the respondent's actual name. The raw primary data is securely stored at the secure repository of the Centre for Human Rights at the University of Nairobi.

Discussion

The liberal nature of Kenya's society gives credence to her attempts to safeguard the human rights of diverse categories of people including gay men. However, due to contextual realities buoyed by cultural norms that are hostile towards gay men, there is a need for protection from civil society organizations. It has recently emerged that civil society organizations in their commitment to ensuring justice for all especially marginalized and vulnerable groups, find themselves navigating hostile social environments. Generally, the animosity is based on a narrow understanding of sexuality and expanding boundaries for sexual expression. The following discussion expresses the views of key informants and gay men who participated in the interviews and FDGs.

Cultural Prejudice and Gay Men's Rights

Stigma, shame, and societal ridicule are the main drivers of marginalization and victimization experienced by gay men in Kenya who go on to suffer physical and mental violence, verbal abuse, denial of services, eviction, family ostracism, correctional rape, blackmail, loss of jobs, limited access to clinical and other social services. . These experiences combined have inhibited

gay men from publicly declaring their sexuality otherwise known as 'coming out.' This means that their free enjoyment of constitutionally guaranteed rights is diminished. Ultimately, gay men live in fear of being 'outed' (a colloquialism for revealed).³⁷ The stigma and societal dishonour culminate into ostracism. These negative experiences lead to humiliation, a sense of loss and alienation and in some cases resulted in suicide due to anomie. One of the FGD participants, Aggrey, spoke of the devastating effects of marginalization when he stated the following;

One day I came back home from work only to find a 24-hour eviction notice on my door. When I asked the landlord, he retorted '*hata Mungu alibomoa Sodom na Gomorra.*' (Translated: Vacate in 24 hours. When I inquired from the landlord for the reason, he retorted: even God destroyed Sodom and Gomorrah).

The landlord here was acting on the understanding that being gay is immoral and therefore using the destruction of the cities in the bible, goes ahead to justify the eviction of this tenant causing embarrassment and mental anguish. It is worth noting that the inhumanness of this action goes against the rights of the tenant since it is not easy to find accommodation in the city of Nairobi within 24 hours.

A KI from among the gay men revealed systemic discriminatory practices that pose contradictions in the upholding and protection of gay men's constitutional rights from law enforcement agencies as institutions expected to serve all citizens regardless of creed. However, there is documented evidence that law enforcement officials threaten the rights of gay men because they believe that sexual minorities should be punished³⁸ despite their motto which reads '*utumishi kwa wote*' translated to mean, 'service to all.' The respondent Mr. Mwandaro, stated that;

When the police find out that you are gay, they indulge you in correctional rape for not being heterosexual, as a form of punishment for going against the law. You are compelled into 'accepting' the punishment because the alternative is being beaten and paraded then charged for sexual solicitation.

Misconstrued perception of the role and function of gay men in society presents an additional challenge for CSOs in their attempt to protect and uphold the constitutional rights of gay men in Kenya. It is suggested that cultural constructions that are often vulgar and steeped in a lack of knowledge about sexualities as a continuum rather than a binary have led to reference of homosexuality as attracting a punishment from God. Such conclusions are presenting a

³⁷Fear of being revealed to be a 'non-conformist with the normative sexuality.'

³⁸Ibid.

conundrum both to gay men as subjects and the civil society as actors. A resultant increase in gay men seeking sexual counselling services to conform to social expectations is an indicator of an impending psychological crisis.³⁹

Evidently, cultural prejudice is an inherent challenge not only to gay men's service-seeking behaviour but also to service provision as was stated in the FGD. That a majority of gay men in Kenya are more worried about the discovery of their sexual identity and the concomitant maltreatment by healthcare staff when their sexual orientation is revealed. As a result, respondents stated a preference for privately provided health services over public government hospitals which are deemed not to be particularly welcoming to gay men. Further, the FGD revealed that stigma, denial of service and ridicule abound for gay men that can only afford medical services in public hospitals. This is a gap in service provision that CSOs are actively involved in ameliorating, and among the solutions proposed through advocacy is lobbying and demanding quality services in government hospitals in line with the tenets and expectations of the UDHR. CSOs advocating for equal treatment in the healthcare of gay men is one way of reducing stigma, promoting awareness of rights and diffusing marginalization.⁴⁰

Institutional mechanisms securing gay men's rights

Organizational support for the LGBT group though minimal has provided impetus, especially emboldening them to agitate and lobby for their rights. This minimal support needs to be mainstreamed for protection to be guaranteed. CSOs planning and strategy initiatives targeting mainstream organizations are bearing fruit as was mentioned by Mwangi, a KI who stated as follows;

We have been working with relevant stakeholders to achieve equality for our Key population brothers and sisters. It has not been easy but it is slowly paying off given some mainstream entities like the judiciary is giving us positive feedback albeit much more needs to be done about collaborative efforts.

Extant literature on LGBT rights in Kenya concurs that the first organized movement centred on the advancement of the rights of sexual minorities sprouted in 1997 with the formation of the Ishta Men Having Sex with Men (MSM) movement. At the core of its activities was lobbying for access to healthcare services for sexual minorities. The Ishta MSM movement also heralded the foundation of the Gay and Lesbian Coalition of Kenya (GALCK), a sexual

³⁹KNHCR. Human Rights: The Elusive Mirage. The Fourth State of Human Rights Report. Post Promulgation 2010-2014

⁴⁰KNHCR. Op. Cit.

minorities' umbrella body, currently constituting groups such as Gay Kenya, Minority Women in Action, Artists for Recognition and Acceptance, Ishtar MSM, and the People Marginalized and Aggrieved.⁴¹ Despite all this, the Global Philanthropy Project (GPP) reported that advocates for the rights of sexual minorities in Kenya remained sceptical and unenthusiastic in registering associations for sexual minorities in the wake of various court rulings in 2014.⁴² These cases compelled institutions to recognize Non-Governmental Organizations (NGOs) such as the Transgender Education and Advocacy (TEA) as a realization of the right to assembly for sexual minorities. Activists, re-energized by CSO support, went as far as spotlighting court cases of sexual minorities to normalize their quest for equal treatment.⁴³ This research revealed several other institutional mechanisms protecting and promoting the rights of gay men through strategic litigation under the auspices of organizations such as the Kenya National Commission on Human Rights (KNHCR), Kenya Human Rights Commission (KHRC), Health Options for Young Men on HIV/AIDS/STI (HOYMAS Kenya), and National Gay and Lesbian Human Rights Commission (NGLHRC).

Mainstreaming protections for Gay men in Kenya needs not to be an antagonistic affair since the law already has provisions supporting the UDHR. However, on scrutiny, Sections 162 and 165 of Kenya's penal code criminalizes all sexual acts against the order of nature i.e. non-heterosexual sexual activity. Thus, on the one hand, this indicates a lack of harmony among mainstream human rights institutions, leading to social repercussions such as deceit, corruption and bribery in exchange for freedom and security.⁴⁴ On the other hand, the implementation of UDHR in Kenya is conspicuously lopsided, ignoring sexual minorities as a detail. In failing to protect the rights of the gay community as per the constitution, several duty bearers have abdicated their constitutional roles to CSOs whose major hurdles are poor funding and public stigma for supporting "sin".⁴⁵

Mitigating the Scrutiny, Harassment, and Violence against Gay men CSOs engaging the general public in sensitization programmes and activities for purposes of opening up the space for

⁴¹KHRC, 2014. The Outlawed amongst Us. A study of the LGBTI Community's Search for Equality and Non-discrimination in Kenya. p. 2.

⁴²GPP, 2016. The Perfect Storm the Closing Space for LGBT Civil Society in Kyrgyzstan, Indonesia, Kenya, and Hungary. Global Philanthropy Project p. 18.

⁴³Ibid

⁴⁴Ibid.

⁴⁵The UK Home Office's COI. 2017. Country Policy And Information Note Kenya: Sexual Orientation and Gender Identity. p. 14.

dialogue and recognition of the rights of the LGBT community have reported some positive changes. Notable is the relative shift in attitude and inclination among some communities including religious ones who are considering gay men as having rights. Through the use of media, CSOs are keenly ensuring that sensitization efforts are coupled with education and community engagement to ultimately foster a broader appreciation of sexuality and the right to human dignity enshrined in Kenya's constitution. Omondi, a KI who has been working with one of the oldest CSOs pointed out that;

Today, publishing an article in the local dailies on gay rights is not as difficult as it used to be a while ago. Such milestones have helped us debunk the narrative that having a different sexual orientation is socially deviant. In fact, selected theatres have opened doors to gay-friendly films which we consider a huge step towards equality. We are happy to be delivering on our mandate, gay men are just people.

The KHRC working with key stakeholders in the domain of human rights has played a key role in positioning CSOs to confidently address the gaps within existing mechanisms. Subsequently, training paralegals and empowering grassroots organizations promoting human rights is now the purview of CSOs. This capacity-building approach provides victims of sexual discrimination with safer channels for necessary legal services at the community level. However, due to the high number of attacks targeting rights defenders reported in this research, it is necessary to include CSOs and activists in security briefings at the community level.

Finally, CSOs have recently engaged in social media campaigns to inform the general public about the universality of human rights and the need to respect LGBT rights. The result of this has been the creation of space for a public dialogue to raise questions on how to address violations of gay men's rights. This use of social media invites further dialogue among the youth and educated professionals who frequently access social media. More importantly, while there is persistent rigidity in the acceptance of gay rights, it is not lost to this research that a number of those in the public now show their concern for sexual minorities and have joined in to advocate for their rights. Gay men in Kenya having attracted support from CSOs openly state as follows,

We are now able to share experiences and seek help using the available social media platforms. When unwell, we easily get referrals to friendly health facilities from our peers without fear of prejudice.

A number of countries in the Global South such as Egypt, Kenya, Uganda, Namibia, Zimbabwe, Bangladesh and Tanzania are known to render harsh punishments to

homosexuals.⁴⁶ The attendant criminalization of homosexual relations coupled with societal hostilities predisposes sexual minorities to the risk of violence, harassment, and extortion from institutionalized entities, among them law enforcement agents.⁴⁷ It presents complexities of great proportion for gay men to know that they are prone to arrests and harassment since an aspect of their identity is deemed illegal.⁴⁸ Wepukhulu who identifies as a gay man stated the following;

Our biggest challenge is from the law enforcement officers who do not consider LGBTs as having the right to enjoy and have access to facilities like other members of the society. In some cases, they refuse to investigate crimes that we report, or just laugh at us when we are the victims. It is difficult for LGBTs to access justice in Kenya.

This is despite the fact that such behaviour exhibited by law enforcement is in direct contravention of the tenets of the UDHR and all human rights instruments. Therefore, while Kenya's strict anti-gay laws pose a challenge, CSOs are operating under a small window of opportunity provided by the constitution which casts the benefits of inclusive human rights wide enough to embrace sexual minorities in general and Kenya's gay men in particular.

Conclusion

For most gay men, the risks of exploitation and even more violation once their status is known breeds fear and exacerbate their vulnerability. The institutionalized animosity sanctioned by culture and stereotyping and resistance to the dynamics of social change has worsened the condition of gay men and eroded their confidence in the constitution. Ultimately, the choice to suffer in silence is the only way to survive while ignoring the protections accrued to them in terms of their rights enshrined in the constitution locally and globally. The challenges identified by CSOs can be classified as psychological, social, and economic in addition to explicit homophobic messages from religious and political leaders as well as other members of the society. This research found out that some religious leaders have been known to lead public calls for reconstructive surgery or 'conversion therapy' for gay men regardless of scientific evidence stating its harmful outcomes. Human rights reports by PEMA and GALCK have

⁴⁶Lotta S., Wagberg, E. November 2005. Sexual Orientation and Gender Identity Issues in Development: A Study of Policy and Administration. SIDA, pp. 14.

⁴⁷GPP, 2016. pp. 18. Op. Cit.

⁴⁸The UK Home Office's COI. pp. 14. Opp. Cit.

recounted ongoing violence and abuse by law enforcement agents against sexual minorities across the country, giving room to misinterpretations to protect the police service.

It emerged that CSOs are using civic education to transform the narrative to replace societal dishonour, stigma and discrimination with acceptance and love. CSOs therefore empowered by the expressions of tolerance have unique capacities to reach sexual minorities. The findings of this study are geared toward encouraging CSOs in their salient role of ameliorating the negative effects of marginalization, and victimization to reduce the stigma toward gay men. While increasing support for sexual minorities as a whole, and gay men in particular, CSOs remain a bridge of convenience. Locally assembled sensitization campaigns must dispel societal myths claiming cures for gay men such as hormonal shock or psychological therapy as well as religious exorcism. Additionally, modern-day policing should include mandatory refresher training for law enforcement agencies stressing the importance of treating all persons including gay men with dignity. The training ought to be holistic and target parts of Nairobi where sexual minorities are constantly and consistently under attack, and then best practices are subsequently shared with other cities in the country.

Indeed, a universal understanding of human rights devoid of prejudice towards gay men will enhance the rolling out of supportive policy and legislation from which all society would gain. CSOs are the crucial link between the acceptance and recognition of legal and policy frameworks of the UDHR, and the praxis embodied in the legislature, judiciary and social institutions. By ensuring harmony of all these parts, and fired up by the spirit of the UDHR, CSOs have the wherewithal to easily shift paradigms and converge support for sexual minorities in the African continent in general and in Kenya particularly thereby enabling gay men to claim their space in society, and choose places in which to thrive as human beings.

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